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Tracie K. Lindeman
Clerk of Supreme Court


7 IN THE SUPREME COURT OF THE STATE OF NEVADA

8 CITY OF HENDERSON,) No. 70500
Petitioner,)
9 vs.)
10 THE EIGHTH JUDICIAL DISTRICT)
COURT OF THE STATE OF NEVADA,)
11 IN AND FOR THE COUNTY OF CLARK;)
AND THE HONORABLE KATHLEEN E.)
12 DELANEY, DISTRICT JUDGE,)
Respondents,)
13 and)
14 GIANO AMADO, A/K/A BRANDON)
WELCH,)
Real Party in Interest.)

15 **OPPOSITION TO THE PETITION FOR WRIT OF MANDAMUS**

16 COMES NOW, the Real Party in Interest, GIANO AMADO a/k/a BRANDON WELCH, and
17 files the instant Opposition to the Petition for Writ of Mandamus. The instant answer is filed
18 pursuant to this Honorable Court's order of September 21, 2016, directing the Real Party in Interest
19 to file an answer to the Petition for Writ of Mandamus.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **ISSUES PRESENTED**

- 3 1. Does the Nevada Supreme Court have jurisdiction to consider the Petition for Writ of
4 Mandamus?
- 5 2. If the Nevada Supreme Court has jurisdiction, should the Court exercise that jurisdiction in
6 reference to the instant Petition for Writ of Mandamus?
- 7 3. Was the decision of the District Court in granting the Petition for Writ of Mandamus or, in
8 the Alternative, Writ of Prohibition filed by Real Party in Interest, Welch, in the district court
9 level a manifest abuse of discretion or an arbitrary or capricious exercise of discretion when
10 the Court correctly dismissed an “amended” complaint when no original complaint existed?

11 **POSITION OF THE REAL PARTY IN INTEREST**

- 12 1. The Nevada Supreme Court does not have jurisdiction to consider the petition for writ of
13 mandamus filed by the City of Henderson.
- 14 2. If this Honorable Court determines that they have jurisdiction to consider the instant Petition
15 then they should not intercede.
- 16 3. The Petition for Writ of Mandamus should not be granted since the decision of the District
17 Court was neither a manifest abuse or arbitrary or capricious exercise of discretion when the
18 Court dismissed the “amended” complaint when there in fact were no original complaints
19 to amend.

20 **PROCEDURAL HISTORY**

21 The procedural history of the instant case is fairly well documented in the Petition for Writ
22 of Mandamus filed by the City of Henderson with certain exceptions.

23 Factually, on September 22, 2014, the City of Henderson filed a battery domestic violence
24 case in Case No. 14CR011381 against Amado. (PA 1). On January 13, 2015 they filed an additional
25 battery domestic violence case against Amado in Case No. 15CR859. (PA 2). As a result of the
26 City’s inability to proceed on those two criminal complaints, those criminal complaints were
27 dismissed on July 29, 2015. On July 30, 2015, utilizing the same case numbers the City filed two
28 “amended criminal complaints” documents again charging Mr. Amado with the same allegations as

1 had been set forth within the original complaint. Throughout all proceedings it was the position of
2 the Real Party in Interest, Amado, that the City could not file an "amended" set of complaints when
3 no criminal complaint existed. The original complaints had been totally dismissed by the City
4 Attorney's office. The Petitioner had original suggested in part that the reason that the City Attorney
5 filed an "amended" complaint a day after the original complaints were dismissed and utilized the
6 same case numbers was in an effort to keep it before the same Henderson Municipal Court Judge.
7 So that this Honorable Court is aware, this was not a situation where during the course of a
8 proceeding, the City moved to amend an existing charging document. This was a situation where
9 the City dismissed the original complaints and on the next day filed amended criminal complaints.
10 Throughout all of the filings before the District Court in Clark County, Nevada as well as the
11 Henderson Municipal Court, the City always maintained that these were amended complaints.

12 As the City points out in their opening brief, the matter was originally filed pursuant to a Writ
13 of Mandamus/Writ of Prohibition by Real Party in Interest, Amado, in the district court level but it
14 was determined that the City Municipal Judge should consider the matter first. That procedure was
15 utilized and the City Judge from Municipal Court denied the motion to dismiss. The Petition for
16 Writ of Mandamus or, in the Alternative, Writ of Prohibition was again filed and heard by the
17 Honorable Judge Kathleen Delaney. This was done after briefs had been filed in opposition by both
18 the City and a supplemental response by Petitioner Amado. At issue in part was the provisions of
19 NRS 174.085. The provisions under scrutiny of NRS 174.085 were the following:

- 20 5. The prosecuting attorney, in a case that the prosecuting attorney
21 has initiated, may voluntarily dismiss a complaint:
22 (a) Before a preliminary hearing if the crime with which the
23 defendant is charged is a felony or gross misdemeanor; or
24 (b) Before trial if the crime with which the defendant is
25 charged is a misdemeanor,
26 without prejudice to the right to file another complaint, unless
27 the State of Nevada has previously file a complaint against the
28 defendant which was dismissed at the request of the prosecuting
attorney...

29 While the City quotes some of the language of Judge Delaney they fail to specifically quote
30 exactly what she said in granting the Petition for Writ of Mandamus or, in the Alternative, Petition
31 for Writ of Prohibition. Her full comment was as follows:

1 The way the dust settles on this for me is not - - it's going to
2 sound perhaps like form over substance, but I don't think that's the
3 case.

4 The City of Henderson's procedures cannot trump what the
5 statute requires. And the statute does seem to very clearly require that
6 there be no amended complaint filing after the dismissal of the
7 original complaint. It does seem to contemplate, when you look at
8 the plain language and any fair reading of the statute, that it requires
9 a new complaint. We simply don't have that here. I understand the
10 the City, and I don't disagree with the City, has the right to implement
11 the procedures that it sees fit to make their process work and to
12 ensure compliance with the statute. But that doesn't give them the
13 right to create a procedure that is not in compliance with the statute,
14 ultimately, or at least flies in the face of what the statute appears to
15 require.

16 In this particular case, I do agree with the Petitioner that the
17 City did not follow the statute. I do believe this is more probably
18 granted as writ of prohibition to prohibit the City from the refiling
19 that it undertook. And that the petition should be granted.

20 This is extraordinary relief. I understand that. But in these
21 circumstances it does appear that there was an abuse of discretion and
22 the circumstances are such that even with little guidance from our
23 case law and our statute, I have to give the fair reading of the statute.
24 And that does appear that this procedure violates that.

25 I'mm going to grant the petition and as (sic) Mr. Terry tot
26 (sic) prepare the order. I want counsel to have an opportunity to view
27 it.

28 The abuse and discretion language utilized by Judge Delaney referred both to the City's
procedure to file the "amended complaint" when there was no complaint to amend and the failure
of the Henderson Municipal Court Judge to grant the motion to dismiss.

Respectfully, the Petitioner, City of Henderson, in the instant case submits documents to this
Honorable Court which are not relevant to the instant issue. The only issue herein is whether or not
the District Court abused her discretion in granting Amado's Petition because the statute in question,
NRS 174.085, does not use the terminology "amended complaint" but uses the terminology
"complaint".

ARGUMENT

I. THIS HONORABLE COURT DOES NOT HAVE JURISDICTION TO CONSIDER THE INSTANT PETITION.

In their opening writ, the City of Henderson states the following in part:

While district courts retain final appellate jurisdiction in Justice and
Municipal court cases, this Court may entertain a Writ petition to
review a district court's appellate decision under certain
circumstances, for example, to control a manifest abuse or an

1 arbitrary or capricious exercise of discretion...

2 Respondent Amado agrees with the City that it is the District Court which retains final
3 appellate jurisdiction of justice court and municipal court cases. Respondent Amado, however, does
4 not agree that this Honorable Court, respectfully, has jurisdiction in the instant case. The City of
5 Henderson has sought to proceed by way of a writ of mandamus not by way of a writ of certiorari
6 or prohibition. In *City of Las Vegas v. Carver*, 92 Nev. 198, 547 P.2d 688 (1976) an appeal had been
7 filed from a judgment reversing a municipal court conviction, the City thereafter appealed and the
8 Supreme Court held that they had no jurisdiction for appellate review of a district court judgment
9 entered on an appeal from a municipal court and that the City's remedy, if any, would have been a
10 timely petition for writ of certiorari. While it is odd to hear this Honorable Court indicate they do
11 not have jurisdiction, that is precisely what the *Carver* court found when the court indicated that they
12 would not reach the merits of the appeal but in fact acknowledged that they had no appellate review
13 authority or jurisdiction of a district court judgment which had been entered in an appeal from a
14 municipal court. Within *Carver* they cited cases including *City of Reno v. Dixon*, 42 Nev. 67, 172
15 P. 367 (1918) as standing for the clearly established procedure that no appellate jurisdiction lies with
16 the Supreme Court. As a result, respectfully, the Court does not have jurisdiction over the instant
17 issue.

18 II. EVEN IF THIS HONORABLE COURT FINDS THAT IT HAS JURISDICTION THE
19 COURT SHOULD NOT INTERCEDE.

20 The City of Henderson argues that this Honorable Court should intercede because it involves
21 a question of interpretation of a statute and to resolve a split of authority at the justice or district
22 court level. It is the position of Respondent Amado that the Court should not intercede. The
23 interpretation of the statute in the case at bar does not mandate that this Honorable Court intercede.
24 What the City really wishes for this Court to do is to in effect add language to the statute that does
25 not exist to allow the filing of an "amended complaint". It was the City's error that created the
26 instant issue when they dismissed the criminal complaints and then not on the same day but on a later
27 date filed "amended complaints". The City in effect wants this Honorable Court to rescue them from
28 their own procedural error. This is not a statutory construction issue, it is an issue involving the error

1 or capricious exercises of discretion clearly show that there was no arbitrary or capricious decision
2 reached in the instant case. The District Court viewed the statute and found that the City of
3 Henderson does not have the authority to file an amended charging document when no document
4 to amend existed. In further reaching their decision, the Court recognized that they were mindful
5 that if the Court exercised it's appellate capacity it could potentially undermine the finality of district
6 court appellate jurisdiction. *Hedland* at 134. The Court then outlined it's rare exception to the rule
7 as being a refusal to exercise jurisdiction which does not exist in the instant case or exceeding
8 jurisdiction which again does not exist in the instant case or as "exercises discretion in an arbitrary
9 or capricious manner." The only reason that the Court as even the opinion shows in *Hedland*
10 interceded was that it would have had significant issues of state wide concern and that "the only way
11 this split can be resolved is for this court to exercise its constitutional prerogative to entertain these
12 writ petitions."

13 The issue again is whether or not the decision of Judge Delaney was both arbitrary and
14 capricious in the exercising of her discretion. In *State v. Eighth Judicial District Court (Armstrong)*,
15 127 Nev. Adv. Op. 84, 267 P.3d 777, 779, 780 (2011) the court defined this standard as being "an
16 arbitrary or capricious exercise of discretion is one 'founded on prejudice or preference rather than
17 on reason'" (citations omitted) or "Contrary to the evidence or established rules of law..." (citations
18 omitted). The ruling by Judge Delaney was not founded on any form of prejudice or preference. To
19 the contrary, she did the right thing by looking at the statute, concluding that the term amended
20 complaint was not in it and finding for Petitioner Amado. Additionally, it was not contrary to the
21 evidence because the evidence was exceedingly clear that the original complaints were dismissed
22 and the following day the "amended complaints" were filed. Additionally, even the District Court
23 commented that there were no cases that dealt with this issue so there were in fact no established
24 rules of law. The reason why there may not be any cases that deal with this issue is it was only done
25 in the instant case and again the City cites no cases showing where there is any type of a split of
26 authority. The court in *Armstrong* supra also defines "manifest abuse of discretion" as "a clearly
27 erroneous interpretation of the of law or a clearly erroneous application of a law or rule." Again the
28 decision by Judge Delaney was not clearly erroneous nor was that decision "...exercised

1 improvidently or thoughtlessly and without due consideration...” Critically, again the court in
2 *Armstrong* supra indicated “manifest abuse of discretion does not result from a mere error in
3 judgment but occurs when the law is overridden or misapplied or when the judgment exercised is
4 manifestly unreasonable or the result of partiality prejudice, bias or ill will.” Based upon this
5 definition there was no manifest abuse of discretion.

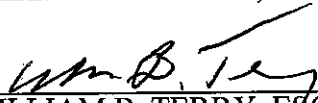
6 The City in their brief suggests to the Court that there was a manifest abuse or an arbitrary
7 or capricious exercise of discretion but cites no cases in support of that position. See the City of
8 Henderson’s Opening Brief pages 15-17.

9 **CONCLUSION**

10 For the above-indicated reasons, it is respectfully requested that the Court not exercise it’s
11 discretionary jurisdiction in the instant case or, in the alternative, find that the decision of the District
12 Court was not a manifest of abuse or an arbitrary or capricious exercise of discretion. It is therefore
13 requested that the Writ be denied.

14 DATED this 4th day of October, 2016.

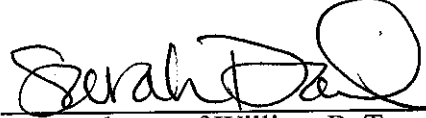
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CERTIFICATE OF SERVICE

I hereby certify that service of the **OPPOSITION TO THE PETITION FOR WRIT OF MANDAMUS** was made this 4th day of October, 2016, via United States Postal Service and electronic transmission to:

Henderson City Attorney
243 Water Street
Henderson, NV 89015
Attorney for Petitioner


An employee of William B. Terry, Chtd.

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