

NO. 82883

**SUPREME COURT
STATE OF NEVADA**

Electronically Filed
Jun 02 2021 02:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

COMPLETE CARE CONSULTING, LLC,

Appellant,

vs.

SHANNON M. CHAMBERS, in her capacity
as the Labor Commissioner of the State of
Nevada; and the STATE OF NEVADA,
OFFICE OF THE LABOR COMMISSIONER,

Respondents.

CIVIL APPEALS DOCKETING STATEMENT

1. Judicial District: Second, Department: 6
County: Washoe
Judge: Simons
District Ct. Case No.: CV20-02009
2. Attorney filing this docketing statement:
Jeffrey A. Dickerson
Bar. No. 2690
305 W. Moana Lane
Suite E
Reno NV 89509
786-6664
Client(s): Appellant COMPLETE CARE CONSULTING, LLC
3. Attorney's representing respondent(s):

Aaron Ford
Attorney General
Andrea Nichols
NSB 6436
Senior Deputy Attorney General
Attorney General's Office
100 N. Main
Carson City, NV 89701-4717
(775) 684-1218
Client(s): SHANNON M. CHAMBERS, in her capacity
as the Labor Commissioner of the State of
Nevada; and the STATE OF NEVADA,
OFFICE OF THE LABOR COMMISSIONER

4. Nature of disposition: Motion to dismiss granted with order of remand to Respondents.
5. Does this appeal raise issues concerning any of the following?

No
☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in the court. None.
7. Pending and prior proceedings in other courts. None.
8. Nature of the action. Petition for judicial review.
9. Issues on appeal.

Did the district court err in determining it lacked jurisdiction because it erroneously determined Appellant had not exhausted administrative remedies and that the Petition was not ripe for judicial review?

10. Pending proceedings in this court raising the same of similar issues.
N/A
11. Constitutional issues.
None.
12. Other issues. Does this appeal involve any of the following issues? (No.)
- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
 - ☐ An issue arising under the United States and/or Nevada Constitutions
 - ☐ A substantial issue of first impression
 - ☐ An issue of public policy
 - ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
 - ☐ A ballot question

13. Trial.
N/A

14. Judicial Disqualification.
No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from.
April 12, 2021

16. Date written notice of entry of judgment or order was served:
April 13, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCPP 50(b), 52(b), or 59):
Not applicable.

18. Date notice of appeal filed.
May 5, 2021

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRCPP 4(a) or other
NRCPP 4(a)(1)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRCPP 3A(b)(1)

☐ NRCPP 3A(b)(2)

☐ NRCPP 3A(b)(3)

☐ Other (specify)

☐ NRS 38.205

☐ NRS 233B.150

☐ NRS 703.376

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Plaintiffs appeal from the final order of dismissal as to all claims and all parties.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties: Complete Care Consulting, LLC, Shannon M. Chambers, and the State of Nevada, Office of the Labor Commissioner.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Judicial review of final order of Labor Commissioner in a classification matter.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following: Not applicable.

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment? N/A

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)): Not applicable.

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims and third party claims: Petition for Judicial Review, **attached**.
- Any tolling motion(s) and order(s) resolving tolling motion(s): N/A
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third party claims asserted in the action or consolidated action below, even if not at issue on appeal: N/A
- Any other order challenged on appeal: Order granting motion to dismiss, **attached**.
- Notices of entry for each attached order: **attached**.

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Dated June 2, 2021

_____/s/Jeffrey A. Dickerson_
JEFFREY A. DICKERSON

CERTIFICATE OF SERVICE

Mr. Morris and Ms. Nichols are efilers in this Court and will be noticed this date with access to a .pdf of this filing by the Court's website upon approval and acceptance of it by the Clerk.

Dated June 2, 2021

___/s/Jeffrey A. Dickerson___

JEFFREY A. DICKERSON

1 Code: \$3550
2 Brian R. Morris
3 Nevada Bar No. 5431
4 5455 S. Fort Apache Rd 108-151
5 Las Vegas, Nevada 89148
6 702-551-6583
7 Attorney for Complete Care Consulting, LLC

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE
12

13 COMPLETE CARE CONSULTING, LLC,)
14)
15 Petitioner/Plaintiff,)
16)
17 vs.) Case No.
18)
19 SHANNON M. CHAMBERS, in her capacity) Dept. No.
20 as the Labor Commissioner of the State of)
21 Nevada; and the STATE OF NEVADA,)
22 OFFICE OF THE LABOR COMMISSIONER,)
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24 Respondents/Defendants.)
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1 Comes Now, Petitioner/Plaintiff Complete Care Consulting, LLC, by and through
2 undersigned counsel and files this Petition for Judicial Review, for a Trial De Novo, and related
3 actions.

- 4 1. This action is brought pursuant to N.R.S. § 607.215 and N.R.S. § 233B.130.
- 5 2. **A Trial De Novo is proper and is requested pursuant to N.R.S. § 607.215(3).**
- 6 3. The Office of the Labor Commissioner (“OLC”) purportedly issued a Subpoena to
7 Complete Care on August 11, 2020.
- 8 4. The OLC later issued a Determination against Complete Care Consulting, LLC
9 (“Complete Care”) on September 17, 2020 (Case #: NLC-20-003290).
- 10 5. Complete Care filed an Objection to the Determination, and requested a hearing on
11 October 2, 2020.

6. The OLC did not address Complete Care's objections, denied its request for a hearing, and issued its Final Order on November 12, 2020.
7. The Final Order against Complete Care, including an Administrative Penalty, totals more than One Hundred Fifty Thousand Dollars (\$150,000).
8. The entire process by the OLC, including its Determination and its Final Order, violated Complete Care's rights to due process.
9. The aforementioned procedures and decisions (decisions), including the Final Order, were not supported by the law.
10. Said decisions were based upon, and made after Complete Care's rights to due process were violated.
11. The OLC did not follow required processes, procedures, and legal obligations.
12. Said decisions were made and based upon unlawful procedure(s), and violated statutory, legal, and/or constitutional provisions or requirements.
13. Said decisions were not supported by proper, relevant and/or substantial evidence.
14. Said decisions were an abuse of discretion.
15. Said decisions were arbitrary and/or capricious.
16. Said decisions were erroneous and a clear error of law.
17. Said decisions should be reversed.
18. Complete Care has been required to hire an attorney to properly assert its rights and should be awarded fees and costs.

Affirmation

I certify that this filing does not contain the social security number of any person.

Dated this 14th day of December, 2020.



Brian R. Morris, Esq.
Attorney for Petitioner/Plaintiff

1 CODE NO 2920
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF
7 THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE
8

9 COMPLETE CARE CONSULTING, LLC., Case No. CV20-02009

10 Petitioner,
11

Dept. No. 6

12 vs.
13

14 SHANNON M. CHAMBERS, in her
15 capacity as the Labor Commissioner of the
16 State of Nevada and the STATE OF
NEVADA, OFFICE OF THE LABOR
COMMISSIONER,

Respondents.

17 ORDER GRANTING MOTION TO DISMISS

18 Before the Court is Respondent, Nevada Labor Commissioner's Motion to Dismiss
19 for Failure to Exhaust Administrative Remedies filed February 9, 2021. Petitioner,
20 Complete Care Consulting, LLC, filed its Opposition on February 23, 2021. Petitioner filed
21 a Reply and submitted the matter for decision on March 3, 2021.

22 Accordingly, after extensive review of the papers and pleadings on file in this action
23 together with the applicable law, the Court sets forth its Order as follows.

24 I. FACTS AND PROCEDURAL HISTORY

25 The Nevada Labor Commissioner ("Labor Commissioner") issued a Determination
26 of Payroll Records Audit on September 17, 2020. Complete Care Consulting, LLC
27 ("Complete Care") submitted a Request for Hearing and Objection to Determination on
28 October 2, 2020. The Labor Commissioner issued a Final Order Setting Forth Findings of

1 Fact and Conclusions of Law on November 12, 2020. Complete Care filed its Petition for
2 Judicial Review in this Court on December 14, 2020 but did not serve it until January 25,
3 2021. In between the filing and service of the Petition for Judicial Review, on January 6,
4 2021, the Labor Commissioner set the matter for a hearing to commence on January 28,
5 2021. On January 26, 2021, one day after serving the Petition for Judicial Review Complete
6 Care submitted a Notice of Want of Jurisdiction with Request to Vacate Hearing Set for
7 January 28, 2021, to the Office of the Labor Commissioner. That same day, January 26,
8 2021, the Labor Commissioner issued an Order vacating the hearing.

9 **II. STANDARD OF REVIEW; LAW AND ANALYSIS**

10 Rule 12(b)(5) of the Nevada Rules of Civil Procedure allows a party to move for
11 dismissal based upon failure to state a claim upon which relief can be granted. The Labor
12 Commissioner argues that dismissal is warranted because Complete Care has not
13 exhausted administrative remedies.

14 The doctrine of failure to exhaust administrative remedies is well established in
15 Nevada. “Whether couched in terms of subject-matter jurisdiction or ripeness, a person
16 generally must exhaust all available administrative remedies before initiating a lawsuit,
17 and failure to do so renders the controversy nonjusticiable. *Allstate Insurance Co. v.*
18 *Thorpe*, 123 Nev. 565, 571-72, 170 P.3d 989, 993-94 (2007). “The ‘exhaustion doctrine’ is
19 sound judicial policy. If administrative remedies are pursued to their fullest, judicial
20 intervention may become unnecessary.” *First American Title v. County of Douglas*, 91 Nev.
21 804, 806, 543 P.2d 1344, 1345 (1975). The administrative review process provides the
22 district court with a fully developed record and administrative decision including factual
23 findings by an administrative body with expertise in a particular area. *Benson v. State*
24 *Engineer*, 131 Nev. 772, 780, 358 P.3d 221, 226 (2015) citing to *Malecon Tobacco, LLC v.*
25 *State ex rel. Dep’t of Taxation*, 118 Nev. 837, 840–41, 59 P.3d 474, 476 (2002). “Indeed,
26 resolving labor law complaints is perhaps one of the Labor Commissioner’s most significant
27 enforcement mechanisms. In this manner, the Labor Commissioner’s expertise is
28 optimized, and the parties then have an opportunity to petition the district court for judicial

1 review and, ultimately, appeal to [the Nevada Supreme] court.” *Baldonado v. Wynn Las*
2 *Vegas, LLC*, 124 Nev. 951, 963, 194 P.3d 96, 104 (2008).

3 This Court’s review of the Labor Commissioner’s Final Order is conducted pursuant
4 to NRS 233B.135. The Court may remand or affirm the final decision or set it aside in
5 whole or in part. When reviewing an administrative agency’s decision, the Court defers to
6 the agency’s findings of fact, but reviews questions of law de novo. *Bombardier*
7 *Transportation (Holdings) USA, Inc., v. Nevada Labor Commissioner*, 135 Nev. 15, 18, 433
8 P.3d 248, 252 (2019). Here the factual record is not fully developed because the Labor
9 Commissioner did not hold a hearing. Therefore, the Court finds this case should be
10 remanded to the Labor Commissioner for further proceedings.

11 Accordingly, and good cause appearing,

12 IT IS HEREBY ORDERED

13 1. Petitioner’s Motion to Dismiss is GRANTED.

14 2. This matter is REMANDED to the Labor Commissioner who shall
15 conduct a hearing and enter a final decision.

16 Dated this 11th day of April, 2021

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19 _____
DISTRICT JUDGE

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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 12th day of April, 2021, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

BRIAN MORRIS, ESQ.
ANDREA NICHOLS, ESQ.
JEFF DICKERSON, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Heidi Boe

1 CODE 2540
AARON D. FORD
2 Attorney General
ANDREA NICHOLS
3 Senior Deputy Attorney General
Bar No. 6436
4 State of Nevada
Office of the Attorney General
5 100 N. Carson Street
Carson City, NV 89701-4717
6 (775) 684-1218 (phone)
(775) 684-1156 (fax)

7 Attorneys for Respondents

9 IN THE SECOND JUDICIAL DISTRICT COURT OF
10 THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

11 COMPLETE CARE CONSULTING, LLC., Case No. CV20-02009
12 Petitioner, Dept. No. 6
13 vs.

14 SHANNON M. CHAMBERS, in her
15 capacity as the Labor Commissioner of the
16 State of Nevada and the STATE OF
NEVADA, OFFICE OF THE LABOR
COMMISSIONER,

17 Respondents.

18 NOTICE OF ENTRY OF ORDER

19 PLEASE TAKE NOTICE that on April 12, 2021 the above-entitled Court entered its
20 Order Granting Motion to Dismiss. A copy of said Order is attached as Exhibit "1."

21 Respectfully Submitted this 13th day of April 2021.

22 AARON FORD
23 Attorney General

24 By: /s/ Andrea Nichols
ANDREA NICHOLS, Bar No. 6436
25 Senior Deputy Attorney General
26
27
28

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document *Notice of Entry of Order*, does not contain the social security number of any person.

Respectfully Submitted this 13th day of April 2021.

AARON FORD
Attorney General

By: /s/ Andrea Nichols
ANDREA NICHOLS, Bar No. 6436
Senior Deputy Attorney General

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Brian R. Morris
5455 S. Fort Apache Road 108-151
Las Vegas, NV 89148

/s/ Susan Messina
an employee of the
Office of the Nevada Attorney General

SECOND JUDICIAL DISTRICT COURT
COMPLETE CARE CONSULTING v. STATE OF NEVADA

EXHIBIT NO.	DESCRIPTION	Number of Pages
1	Order Granting Motion to Dismiss (Respondents' Motion to Dismiss for Failure to Comply with NRS 233B.131(1)(a))	4

Brian R. Morris
Nevada Bar No. 5431
5455 S. Fort Apache Rd 108-151
Las Vegas, Nevada 89148
702-551-6583

Jeffrey A. Dickerson
NSB 2690
305 W. Moana Ln. Ste. E
Reno NV 89509
775-786-6664

Attorneys for Complete Care Consulting, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

COMPLETE CARE CONSULTING, LLC,

Case No. CV20-02009

Petitioner,

Dpt. 6

vs.

SHANNON M. CHAMBERS, in her capacity
as the Labor Commissioner of the State of
Nevada; and the STATE OF NEVADA,
OFFICE OF THE LABOR COMMISSIONER,

Respondents/Defendants.

NOTICE OF APPEAL

Petitioner appeals from the order of the Court filed April 12, 2021, written notice of entry
of which was served on April 13, 2021.

I certify this document does not have the SSN of any person.

Dated May 5, 2021

____/s/Jeffrey A. Dickerson____

JEFFREY A. DICKERSON

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Dated May 5, 2021

JEFFREY A. DICKERSON

AFFIRMATION

I affirm this document does **NOT** contain the Social Security Number of any person.

Dated May , 2021

___/s/Jeffrey A. Dickerson___

JEFFREY A. DICKERSON