

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARSON TAHOE HEALTH SYSTEM
and GALLAGHER BASSETT
SERVICES, INC.,

Appellants,

v.

STEPHEN YASMER,

Respondents.

Supreme Court Case No. 83686
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APPELLANTS' OPENING BRIEF

JOHN P. LAVERY, ESQ.
Nevada Bar No. 004665
L. MICHAEL FRIEND, ESQ.
Nevada Bar No. 011131
LEWIS BRISBOIS BISGAARD &
SMITH LLP
2300 W. Sahara Avenue, Suite 900, Box
28
Las Vegas, Nevada 89102
Attorneys for Appellants
Carson Tahoe Health System and
Gallagher Bassett Services, Inc.

EVAN BEAVERS, ESQ.
Nevada Bar No. 003399
NEVADA ATTORNEY FOR
INJURED WORKERS
1000 E. William St., Ste. 208
Carson City, NV 89701
Attorney for Respondent
Stephen Yasmer

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

RELATED ENTITIES:

None.

LAW FIRMS APPEARING FOR APPELLANTS IN THE CASE OR EXPECTED TO APPEAR IN THIS COURT:

JOHN P. LAVERY, ESQ., JEANNE P. BAWA, ESQ., and L. MICHAEL FRIEND, ESQ. of LEWIS BRISBOIS BISGAARD & SMITH LLP, have appeared or are expected to appear in this court, and/or the underlying proceedings with the district court and administrative agency, on behalf of Appellants.

II.

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III.

TABLE OF AUTHORITIES

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IV.

JURISDICTIONAL STATEMENT

On September 20, 2021, the District Court filed its Order Granting Motion to Dismiss Appellants' Petition for Judicial Review. On October 14, 2021, the Notice of Entry of Order was filed. Appellants were aggrieved by the final order of the District Court and filed the instant appeal on October 21, 2021, with this Honorable Court per NRS 233B.150. See also NRAP Rule 3 and 4. Accordingly, this Court has jurisdiction.

V.

ROUTING STATEMENT

Under NRAP 17(b)(9), this case would be presumptively assigned to the Court of Appeals as it concerns a petition for judicial review of an administrative agency's final decision.

VI.

STATEMENT OF THE ISSUES FOR REVIEW

1. Whether the Second Judicial District Court, County of Washoe has jurisdiction over the petition for judicial review of the administrative agency's decision.

VII.

STATEMENT OF THE CASE

The issue before the Court is subject matter jurisdiction. The underlying appeal stems from a workers compensation appeal before an administrative agency. The injured worker, Stephen Yasmer, resides and works at Carson Tahoe Health System in Carson City, Nevada. The employer's third-party administrator, Gallagher Bassett Services, Inc., is a foreign corporation.

Mr. Yasmer filed a workers' compensation claim, which the administrator denied. Mr. Yasmer filed an appeal in Carson City, Nevada. Following litigation before the administrative agencies in Carson City, Nevada, an appeals officer reversed administrator's claim denial determination. Employer and administrator timely petitioned for judicial review in the Second Judicial District, Washoe County. Mr. Yasmer moved to dismiss for lack of subject jurisdiction, and the District Court granted the motion.

Employer posits that the Second Judicial District, Washoe County should have subject matter jurisdiction based on the facts of the case.

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VIII.

STATEMENT OF FACTS

Respondent Stephen Yasmer (hereinafter “Claimant”), a resident of Carson City, Nevada, alleged an industrial injury occurring on June 8, 2020, while working at Carson Tahoe Hospital in Carson City, Nevada. (App. Vol. II at 245.) Carson Tahoe Hospital is part of the Carson Tahoe Health System (hereinafter “Employer”). (App. Vol. II at 385.) Claimant testified that he manages employees at four different locations for Employer, with three in Carson City and one in Douglas County. (App. Vol. II at 221.)

Carson Tahoe Health System is a domestic partnership and a comprehensive healthcare network featuring two hospitals, two urgent cares, and a provider network with twenty-one regional locations, including two in Washoe County, serving patients throughout Northern Nevada. (App. Vol. II at 385-386.)

Petitioner third-party administrator Gallagher Bassett Services, Inc. (hereinafter “Gallagher Bassett”), denied the industrial insurance claim on June 23, 2020. (App. Vol. II at 248.) Claimant timely appealed that determination. (App. Vol. II at 249.)

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Gallagher Bassett is a nationwide third-party administrator. It is a foreign corporation headquartered in Illinois and licensed by the Nevada Division of Insurance to do business in the State of Nevada. (App. Vol. II at 383-384.)

Following litigation before the administrative agencies in Carson City, Nevada, an appeals officer rendered a decision and order on April 15, 2021, reversing Gallagher Bassett's claim denial determination and ordering the claim accepted. (App. Vol. II at 203-213.)

Gallagher Bassett and Employer timely filed a Petition for Judicial Review and a Motion for Stay with the Second Judicial District Court, Washoe County, on May 3, 2021, per NRS 233B.130(2)(b). (App. Vol. I at 1-74.)

Claimant filed a Statement of Intent to Participate on May 10, 2021. (App. Vol. I at 75-78.)

On May 11, 2021, the parties stipulated to allow Claimant additional time to oppose the motion. (App. Vol. I at 79-83.)

On May 26, 2021, Claimant filed his opposition to Gallagher Bassett and Employer's motion for stay. (App. Vol. I at 84-111.)

The Appeals Division transmitted the Record on Appeal on June 4, 2021, although it was deficient and had to be re-submitted on August 5, 2021. (App. Vol. I at 112-115; Vol. II at 200-346.)

Gallagher Bassett and Employer filed their Opening Brief on July 13, 2021. (App. Vol. I at 116-133.)

On August 4, 2021, Claimant filed a Motion to Dismiss Petition for Judicial Review based on lack of subject matter jurisdiction. (App. Vol. I at 134-199.) The parties thereafter briefed the jurisdiction issue before the District Court. (App. Vol. II at 376-395.)

On September 20, 2021, the District Court granted Claimant's Motion to Dismiss Petition for Judicial Review, with the Notice of Entry of Order filed on October 14, 2021. (App. Vol. II at 408-419.)

Gallagher Bassett and Employer filed the instant appeal on October 21, 2021. (App. Vol. II. at 420-437.)

IX.

SUMMARY OF THE ARGUMENT

The issue before this Court is whether the Second Judicial District Court, Washoe County, has subject matter jurisdiction over the petition for judicial review. Claimant's employer, Carson Tahoe Hospital, is part of the Carson Tahoe Health System comprehensive healthcare network featuring two hospitals, two urgent cares, and a provider network with twenty-one regional locations, including two in Washoe County, serving patients throughout Northern Nevada. Claimant testified he is required to oversee employees in Carson City and Douglas County. Based on the

Employer's connections to Washoe County, Appellants posit the venue is proper when coupled with the lack of delay or prejudice to Claimant by having the petition reviewed in Washoe County.

X.

ARGUMENT

A.

Standard of Review

The underlying proceeding involved a petition for judicial review of an administrative agency decision, which is governed by the Nevada Administrative Procedure Act codified at NRS Chapter 233B. When interpreting the filing requirement set forth in NRS 233B.130(2)(b) to determine whether the district court properly dismissed Carson Tahoe Health System and Gallagher Bassett Services, Inc.'s petition, a de novo review is applied. Webb v. Shull, 128 Nev. 85, 88-89, 270 P.3d 1266, 1268 (2012). Subject matter jurisdiction is a question of law subject to de novo review. Ogawa v. Ogawa, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009).

B.

Subject Matter Jurisdiction is Proper

NRS 233B.130(2) sets forth the filing requirements for a Petition for Judicial Review. The statute states that an aggrieved party must file their petition "in the district court in and for Carson City, in and for the county in which the aggrieved

party resides or in and for the county where the agency proceeding occurred.” NRS 233B.130(2)(b). Based on the facts of this case, the Second Judicial District Court is an appropriate venue.

In this case, the aggrieved parties are the employer, Carson Tahoe Health System, and its third-party administrator, Gallagher Bassett. The question is whether either of these corporate entities “reside” in Washoe County.

NRS 233B.130(2)(b) is mandatory and jurisdictional. Liberty Mut. v. Thomasson, 130 Nev. 28, 30, 317 P.3d 831, 833 (2014). With regard to foreign corporations, “the mere fact that it is doing business in this state does not fix its residence in any particular county for the purpose of venue . . .” Western Pacific Railroad v. Krom, 102 Nev. 40, 43, 714 P.2d 182, 184(1986)(citing, Byers v. Graton, 82 Nev. 92, 95, 411 P.2d 480, 481(1966)). However, a foreign corporation cannot have fixed residency in a particular Nevada county for purposes of NRS 233B.130(2)(b). Thomasson, 130 Nev. at 34, 317 P.3d at 836. Although the matter at issue is subject matter jurisdiction, the venue statutes act as a guide for determining corporate residence. Id.

With regard to Gallagher Bassett, it is a foreign corporation headquartered in Illinois and licensed by the Nevada Division of Insurance to do business in the State of Nevada. (App. Vol. II at 383-384.) Like Liberty Mutual in Thomasson, it has no fixed residency in a particular county in Nevada, and is therefore restricted to filing

in Carson City or the county where the agency proceeding occurred, which is also Carson City. Accordingly, the District Court in Washoe County does not have jurisdiction over Gallagher Bassett based on these facts.

The focus then turns toward the Employer, Carson Tahoe Health System. Carson Tahoe Health System is a domestic partnership and a comprehensive healthcare network featuring two hospitals, two urgent cares, and a provider network with twenty-one regional locations, including two in Washoe County, serving patients throughout Northern Nevada. (App. Vol. II at 385-386.) Claimant testified that he manages employees at four different locations for Employer, with three in Carson City and one in Douglas County. (App. Vol. II at 221.) Based on these facts, the Employer is intrinsically interconnected with Washoe County such that jurisdiction is proper.

In addition, there has been no prejudice to Claimant, nor any delay in his participation in this litigation, as evidenced by the fact that he was able to make his appearance in this case and obtain agreement from Appellants to extend his time to oppose their motion for stay—all within the 30 days in which a petition could be filed. NRS 233B.130(2)(d). Further, estoppel should apply as Claimant filed responsive pleadings with the Court, contrary to its current position that the matter should be dismissed. Finally, policy prefers deciding cases on the merits.

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XI.

CONCLUSION

Based on the above, Appellants respectfully request that jurisdiction vest with the Second Judicial District Court, Washoe County, and remanded for this matter to proceed on the merits.

DATED this 14 day of March, 2022.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ L. Michael Friend
JOHN P. LAVERY, ESQ.
Nevada Bar No. 004665
L. MICHAEL FRIEND, ESQ.
Nevada Bar No. 011131
2300 West Sahara Avenue, Suite 900, Box 28
Las Vegas, NV 89102
Phone: (702) 893-3383
Facsimile: (702) 366-9563
Attorneys for Appellants

X.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman font size 14.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains 1,409 words and 135 lines of text.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or Appendix where the matter relied on is to be found.

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4. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 14 day of March, 2022.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ L. Michael Friend
JOHN P. LAVERY, ESQ.
Nevada Bar No. 004665
L. MICHAEL FRIEND, ESQ.
Nevada Bar No. 011131
2300 West Sahara Avenue, Suite 900, Box 28
Las Vegas, NV 89102
Phone: (702) 893-3383
Facsimile: (702) 366-9563
Attorneys for Appellants

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 14 day of March, 2022, service of the attached APPELLANTS' OPENING BRIEF was made this date by depositing a true copy of the same for mailing, first class mail, and/or electronic service as follows:

Evan Beavers, Esq.
NEVADA ATTORNEY FOR INJURED WORKERS
1000 E. William Street, Suite 208
Carson City, NV 89701

CARSON TAHOE HEALTH SYSTEM
Attn: Risk Management
1600 Medical Pkwy.
Carson City, NV 89706

Yvette McCollum, Sr. Claims Adjuster
GALLAGHER BASSETT SERVICES, INC.
PO Box 2934
Clinton, IA 52733

/s/ L. Michael Friend

An employee of LEWIS, BRISBOIS, BISGAARD & SMITH, LLC