

IN THE SUPREME COURT OF THE STATE OF NEVADA
Case No. 83686

CARSON TAHOE HEALTH SYSTEM; AND GALLAGHER BASSETT SERVICES, INC.
Appellants,

v.

STEPHEN YASMER,
Respondent.

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Appeal from a District Court Order
Denying Petition for Judicial Review
Second Judicial District Court
Department 8
Case No. CV21-00809

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

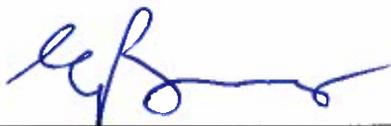
The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

Respondent's parent corporations: None

Firms having appeared: Nevada Attorney for Injured Workers

Respondent's pseudonyms: None

Submitted this 21st day of April, 2022.



Evan Beavers, Esq.
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II.

JURISDICTIONAL STATEMENT

This is an appeal from a district court order issued upon judicial review of an administrative agency decision. An appeals officer with the Department of Administration was presented with an appeal of an injured employee seeking workers' compensation benefits. The appeals officer ruled in favor of the injured employee. The employer and its claims administrator sought judicial review of that decision in district court. The district court dismissed the petition for lack of jurisdiction.

The Administrative Procedure Act, at NRS 233B.150, allows an aggrieved party to obtain review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction pursuant to rules fixed by the Supreme Court. The Honorable Barry L. Breslow, Second Judicial District Court, Washoe County, Department 8, issued his Order Granting Motion To Dismiss Petition for Judicial Review on September 20, 2021, and notice of entry of the order was filed October 14, 2021. The employer, Carson Tahoe Health System, and the its claims administrator, Gallagher Basset Services, Inc., are aggrieved parties and the order of dismissal is a final judgment. NRAP 3A(b)(1). There are no tolling motions pending in district court. NRAP 4(a)(4). The district court has stayed enforcement of the underlying administrative decision pending resolution of this appeal.

The aggrieved parties timely initiated their appeal pursuant to NRAP 3 with the filing of the notice of appeal in

district court on October 27, 2021.

The respondent offers no objection to the Supreme Court's jurisdiction to consider this appeal.

III.

ROUTING STATEMENT

This case is in that category of cases presumptively assigned to the Court of Appeals in that it is an appeal of an administrative agency decision not involving tax, water, or public utilities commission determinations. NRAP 17(b)(9). The respondent does not believe that under NRAP 17(a) there is need for the Supreme Court to retain the case.

IV.

STATEMENT OF THE ISSUES

The issue on appeal is whether the Second Judicial District Court of the State of Nevada, In and For the County of Washoe, was granted jurisdiction under the Administrative Procedure Act to consider the petition for judicial review filed by Carson Tahoe Health System and its claims administrator, Gallagher Basset Services, Inc., as those parties sought review of a decision by the Nevada Department of Administration's Appeals Office resulting from administrative proceedings in Carson City.

V.

STATEMENT OF THE CASE

Stephen Yasmer was an employee of Carson Tahoe Health System (CTHS) when he fell at work June 8, 2020, fracturing his ankle. Volume II Appellant's Appendix, page 245. He filed a claim for workers' compensation benefits under Nevada's

Industrial Insurance Act (NRS Chapters 616A thru 616D). Id. His employer's third-party claims administrator, Gallagher Basset Services (GBS), denied the claim. II AA 248. Yasmer appealed that denial to the Department of Administration's Hearing Division which resulted in a hearing officer in the Department's Carson City offices affirming the denial of benefits. II AA 249-251. Yasmer appealed to the second and last level of the administrative hearings process, that is, the appeals office in Carson City. II AA 342-343.

After an evidentiary hearing, Appeals Officer Sheila Y. Moore, Esq., by Decision and Order filed April 15, 2021, ordered GBS to accept Yasmer's claim for workers' compensation benefits. I AA 203-213. CTHS and GBS then filed a Petition for Judicial Review on May 3, 2021, in the Second Judicial District Court seeking review of Appeals Officer Moore's decision. I AA 1-17. At the same time CTHS and GBS also filed a motion to stay the appeals officer's order pending the appeal (I AA 18-74) and also filed their "Petitioners' Request for Order Shortening Time of Motion for Stay" (Respondent's Appendix, Volume 1, pages 1-27).

Yasmer's counsel timely filed a notice of intent to participate in the judicial review on May 10, 2021. I AA 75-78. Counsel for all parties then stipulated to extend the time for Yasmer to answer the motion for stay and agreed to stay enforcement of the appeals officer's order until the district court could rule on the motion for stay. I AA 79-83. On May 26, 2021, Yasmer filed his Opposition to Petitioner's Motion for Stay Pending Appeal. I AA 84-110.

Next, CTHS and GBS filed their opening brief in support

of their petition for judicial review. I AA 116-133. Yasmer then filed his Motion to Dismiss Petition for Judicial Review alleging that pursuant to the Nevada Administrative Procedure Act the Second Judicial District Court was without jurisdiction to consider the petition. I AA 134-199. On August 9, 2021, Yasmer filed his answer to the opening brief (II AA 347-375) and again raised the objection to jurisdiction (II AA 353-354). CTHS and GBS then filed an opposition to Yasmer's motion to dismiss. II AA 376-386. Yasmer then filed a reply in support of his motion to dismiss. II AA 387-395. Lastly, CTHS and GBS filed their reply brief to conclude briefing on the petition for judicial review itself. II AA 396-407.

The Honorable Barry L. Breslow, District Judge for the Second Judicial District, on September 13, 2021, heard arguments on the petitioners' motion for stay and the respondent's motion to dismiss. II AA 415. Ultimately, the court entered its Order Granting Motion to Dismiss Petition for Judicial Review on September 20, 2021. II AA 414-419. That order is the object of the present appeal to the Supreme Court. II AA 420-437.

At the same time as they filed their appeal of the order dismissing their petition for lack of jurisdiction, CTHS and GBS also moved the district court to stay enforcement of the order dismissing the petition and staying the original appeals officers' order (1 RA 28-41). CTHS and GBS also filed their "Appellants' Request for Order Shortening Time on Motion for Stay" (1 RA 42-58). Yasmer opposed the stay citing the district court's decision that it lacked jurisdiction to consider the matter. 1 RA 58-118. The district court granted the stay.

1 RA 119-124. Yasmer moved for clarification. 1 RA 125-131.
The district court confirmed the stay. 1 RA 132-134.

VI.

STATEMENT OF THE FACTS

Carson Tahoe Health System was, at the time of the filing of the petition for judicial review in Washoe County, a Nevada corporation with a Nevada resident agent in Carson City registered with the Nevada Secretary of State. I AA 189-191. According to the records of the Secretary of State, the principal officers all shared an address in Carson City, Nevada. Id.

Gallagher Bassett Services, Inc., was, at the time of the filing of the petition for judicial review in Washoe County, a Delaware corporation with a Nevada resident agent in Carson City registered with the Nevada Secretary of State. I AA 185-187. According to the records of the Secretary of State, the principal officers all shared an address in Rolling Meadows, Illinois. Id.

VII.

SUMMARY OF THE ARGUMENT

The district court was without jurisdiction to review the appeals officer's decision of April 15, 2021, ordering workers' compensation benefits for Stephen Yasmer absent the petitioners' strict compliance with NRS 233B.130(2)(b). That statute required Carson Tahoe Health Systems and Gallagher Bassett Services to file their petition for judicial review in the First Judicial District Court In and For Carson City. The petitioners filed in the Second Judicial District Court In and For Washoe County, and that court was without jurisdiction to

consider the petition. The Washoe County District Court's order dismissing the petition for lack of jurisdiction was proper under the circumstances and should be affirmed.

VIII.

ARGUMENT

Standard of Review

This appeal presents the issue of whether the Second Judicial Court for Washoe County enjoyed the jurisdiction to consider the petition for judicial review filed in that court by Carson Tahoe Health System (CTHS) and Gallagher Bassett Services, Inc. (GBSI). Subject matter jurisdiction is a question of law subject to de novo review. Ogawa v. Ogawa, 125 Nev. 660, 667, 221 P.3d 699, 703 (2009) (citations omitted). Where the Supreme Court addresses an issue of law a de novo standard of review is applied. Elizondo v. Hood Mach., Inc., 129 Nev. 780, 784, 312 P.3d 479, 482, (2013) (citations omitted). The standard for reviewing a petition for judicial review is the same for the Supreme Court as it is for the district court. Id. (citations omitted). When the text of a statute is plain and unambiguous the Court will not go beyond that meaning. City of N. Las Vegas v. Warburton, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011) (citations omitted). Multiple provisions must be read in harmony unless it is clear the Legislature intended otherwise. Id. (citations omitted). Subject matter jurisdiction can be raised by the parties at any time or sua sponte by a court of review. Swan v. Swan, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990) (citations omitted).

...

NRS 233B.130 provides for three locations to file a petition for judicial review, and the Second Judicial District for Washoe County was not one of those locations given the facts of this case.

According to the Legislature's own expression of intent, the Nevada Administrative Procedure Act (NAPA) establishes the minimum procedural requirements for the regulation-making and adjudication procedure of all agencies in the executive department. NRS 233B.020(1). That would include, in this case, the adjudication procedure for reviewing a decision by an appeals officer of the Department of Administration Hearing Division. The provisions of NAPA are "the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which [the] chapter applies." NRS 233B.130(6).

NRS 233B.130(2) requires that petitions for judicial review must:

- (a) Name as respondents the agency and all parties of record to the administrative proceeding;
- (b) Be instituted by filing a 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;
- (c) Be served upon:
 - (1) The Attorney General, or a person designated by the Attorney General, at the Office of the Attorney General in Carson City; and
 - (2) The person serving in the office of administrative head of the named agency; and
- (d) Be filed within 30 days after service of the final decision of the agency.

"Courts have no inherent appellate jurisdiction over official acts of administrative agencies except where the

legislature has made some statutory provision for judicial review." Washoe County v. Otto, 128 Nev. 424, 431, 282 P.3d 719, 724 (2012) (quoting Crane v. Continental Telephone, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989)). On review of NRS 233B.130(2), the Supreme Court of Nevada has declared subsection (2)(b) to be subject to strict compliance deemed mandatory and jurisdictional. See Liberty Mutual v. Thomasson, 130 Nev. 28, 317 P.3d 831, 832-835 (2014). Thomasson has direct application to the issues raised in this appeal by Carson Tahoe Health Services and Gallagher Bassett.

In Yasmer's motion to dismiss filed with the district court (I AA 136-199), it was raised to the court's attention that NRS 233B.130(2)(b) requires strict construction under the Thomasson case and that the petition for review was not filed in conformance with the statute or the case law. It was argued in the motion that while the employer and its TPA were aggrieved parties to the administrative decision for which review was sought, neither were "residents" of Washoe County as the Supreme Court construed that term in Thomasson. In support of the motion, records from the Nevada Secretary of State were offered to show Gallagher Bassett was a foreign corporation, and that while Carson Tahoe Health Services was a Nevada corporation its corporate presence was entirely in Carson City. I AA 185-187; 189-191.

In the Thomasson case the insurer claimed that although its headquarters was in Boston, it had an office in Reno and was, for the purposes of NRS 233B.130(2)(b), a resident of Washoe County. Thomasson at 832. The Court determined the term

"resides", as it appears in that statute, was ambiguous. Id. Ultimately, the Court concluded a corporation's place of residence for NRS 233B.130(2)(b) is that which is listed as the principal place of business in its article of incorporation. Id. At 833.

In response to Yasmer's motion to dismiss filed with the district court, the petitioners Carson Tahoe Health and Gallagher Bassett did not offer articles of incorporation to aid the court in applying the rule in Thomasson. The exhibits offered in opposition to the motion to dismiss did not prove either petitioner was a "resident" as the term was construed in Thomasson. II AA 383-386. Gallagher Bassett, according to the records of the Secretary of State offered in support of the motion to dismiss, was a foreign corporation. According to Thomasson, a foreign corporation cannot have a fixed residency in a particular Nevada county for the purposes of NRS 233B.130(2)(b). Id. at 834. The only court in which Gallagher Bassett could have filed a petition for review of the appeals officer's decision in the Yasmer case would have been the district court in and for Carson City, or the court in and for the county where the agency proceeding occurred, in this case, also Carson City. Gallagher Bassett chose, instead, to file in the Second Judicial District for Washoe County - a court without jurisdiction to hear the matter.

According to the records of the Secretary of State filed with the motion to dismiss, Carson Tahoe Health Systems could have filed its petition for review in Carson City and it would have been in compliance with NRS 233B.130(2)(b) and nothing

in Thomasson could be construed to deny the First Judicial District Court for Carson City jurisdiction to hear the petition. Carson Tahoe Health Systems erred by filing in the Second District Court in Washoe County, a court without jurisdiction to hear the matter.

IX.

CONCLUSION

After a full evidentiary hearing, Appeals Officer Sheila Y. Moore, Esq., decided Stephen Yasmer was entitled to the benefits provided to him pursuant to Nevada's Industrial Insurance Act. In her Decision and Order filed April 1, 2021, Appeals Officer Moore ordered Gallagher Bassett Services to accept Mr. Yasmer's claim for benefits and provide all medical treatment and benefits available under the Act. The employer and the administrator sought judicial review of Appeals Officer Moore's decision, but failed to comply with the dictates of the Administrative Procedure Act, and the district court properly dismissed their petition. The district court's decision should be affirmed and the stay preventing enforcement of the appeals officer's decision should be quashed.

DATED this 2nd day of April, 2022.

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CERTIFICATE OF COMPLIANCE

(NRAP 28.2)

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:

 X This brief has been prepared in a monospaced typeface using Word Perfect X3 with 10.5 characters per inch in Courier New font size 12.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is either:

 Monospaced, has 10.5 or fewer characters per inch, and
contains words or lines of text; or

 X Does not exceed 30 pages.

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. I understand that I

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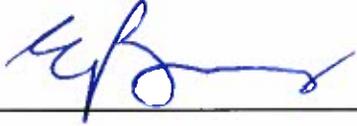
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...

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.

Respectfully submitted this 27th day of April, 2022.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d), I certify that I am an employee of the State of Nevada, Nevada Attorney for Injured Workers, and that on this date, the foregoing RESPONDENT'S ANSWERING BRIEF was electronically submitted to the clerk of the Supreme Court eFlex system, resulting in electronic service to the following user(s)

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