IN THE SUPREME COURT OF THE STATE OF NEVADA

MONTREAUX GOLF CLUB, INC., AND MONTREAUX JOINT VENTURE, NEVADA GENERAL PARTNERSHIP,
Appellants,
vs.
HUGH RICCI, P.E., NEVADA STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,
Respondent.

No. 44877

FILED

JAN 23 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a petition for judicial review of an administrative decision in a water law case.[1] Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On October 11, 2004, the Second Judicial District Court, Department 10, entered an order dismissing in part, and reinstating the briefing schedule in, appellants' petition for judicial review of respondent State Engineer's administrative water law decision. Under the district court's October 11 order, appellants' opening brief (points and authorities) was due within forty days after the agency gave written notice that the administrative record had been filed. As the administrative record was apparently filed in the district court on November 9, 2004, the opening brief was due on or before December 20, 2004.

[1]Pursuant to NRAP 34(f), we have determined that oral argument is not warranted in this case.

Appellants did not, however, file their opening brief by that date. Instead, on January 19, 2005, they filed a stipulation, signed by respondent, agreeing to extend the opening brief's due date to thirty days after the federal district court had entered an order resolving a related action. The stipulation was mistakenly directed to Department 1, though, and on January 20, 2005, that Department entered an order extending the time for filing the opening brief and staying the briefing schedule pending resolution of the related federal court matter.

Later that month, appellants apparently realized their error and notified Department 10 of the mistake. Thereafter, on February 10, 2005, the district court, Department 10, sua sponte issued an order striking Department 1's order that stayed the briefing schedule and dismissing the petition for judicial review for appellants' failure to file an opening brief as the court had directed in its October 11 order. In so doing, the court noted that the stipulation was submitted to Department 1 "in error," and that neither department had been aware of the error.

In their subsequent appeal, appellants argue that the district court's dismissal of their petition was too drastic a sanction under the circumstances. We agree.

While the district court has inherent discretionary power to dismiss a case for failure to prosecute (or similarly, for failure to pursue an appeal) or to comply with its orders, "dismissal with prejudice is a harsh remedy to be utilized only in extreme situations[, and it] must be weighed against the policy of law favoring the disposition of cases on their merits."[2]

---

[2]Moore v. Cherry, 90 Nev. 390, 393, 528 P.2d 1018, 1020-21 (1974) (citations omitted).

Moreover, this policy has been applied in the context of judicial review proceedings and other appellate contexts,[3] and NRS 533.450's provisions regarding judicial review of administrative water law decisions specifically indicate that "[t]he proceedings in every case shall be heard by the court, . . . [and] full opportunity to be heard shall be had before judgment is pronounced."[4]

Here, there is no indication that appellants had abandoned or acted in bad faith regarding their petition for judicial review. Before the district court dismissed the petition, appellants had obtained and filed an agreement with respondent to extend the time to file an opening brief. Further, they expressed a desire to do so in order that the petition could be more efficiently resolved in light of the related federal court proceedings. Then, once they became aware of the error in the stipulation's department number, they brought that error to the correct department's attention in attempting to correct the mistake.

As a result, notwithstanding the apparent typographical error resulting in the submission of the stipulation to Department 1 instead of

---

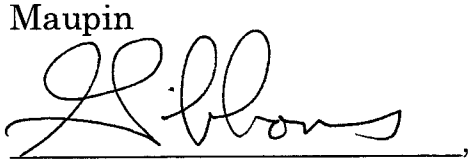
[3]See, e.g., State, Dep't of Mtr. Vehicles v. Moss, 106 Nev. 866, 868, 802 P.2d 627, 628 (1990) (noting that "[p]olicy strongly favors deciding cases on their merits" and reversing a district court order granting a petition for judicial review based on a failure to file a responsive brief by the court-ordered due date when the error was made in good faith and no party was prejudiced); Strattan v. Raine, 45 Nev. 7, 9-10, 192 P. 471, 472 (1921) (recognizing an unwillingness to dismiss an appeal for failure to prosecute (i.e., to file an opening brief), instead granting appellant fifteen days in which to do so, because, unlike other cases in which no excuse was made or attempt to prosecute made, the appellant had adequately demonstrated a good faith desire to prosecute the appeal).

[4]NRS 533.450(2).

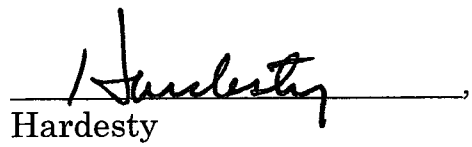
Department 10, it appears that, at the time the district court dismissed the petition, appellants possessed a good faith desire to pursue the petition for judicial review. Moreover, no party was prejudiced by the delay. Consequently, the district abused its discretion when it dismissed the petition for judicial review for appellants' failure to file an opening brief by December 21, 2004,[5] and we reverse the district court's order of dismissal and remand this matter for further proceedings consistent with this order.

It is so ORDERED.

_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

cc: Hon. Steven P. Elliott, District Judge
King & Taggart, Ltd.
Attorney General George Chanos/Carson City
Washoe District Court Clerk

---

[5]See Moss, 106 Nev. 866, 802 P.2d 627; Strattan, 45 Nev. 7, 192 P. 471.