


IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WARE, AN INDIVIDUAL,
Petitioner,
vs.
THOM REILLY, IN HIS CAPACITY AS
COUNTY MANAGER FOR THE
COUNTY OF CLARK, STATE OF
NEVADA,
Respondent.

No. 47040

FILED

APR 26 2007

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus or prohibition challenging the Clark County Manager's decision not to pay petitioner the full salary amount to which the Clark County District Court determined petitioner was entitled, as the Assistant Court Administrator, Civil/Criminal Division.

In this original proceeding, petitioner Michael Ware seeks a writ of mandamus directing respondent Thom Reilly, in his capacity as County Manager, to reinstate Ware's longevity pay.¹ This court has original jurisdiction to issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an

¹Ware also requests, in the alternative, a writ of prohibition. However, a writ of prohibition is usually issued to arrest the proceedings of a tribunal, corporation, or board exercising judicial functions. See NRS 34.320; Mineral County v. State, Dep't of Conserv., 117 Nev. 235, 243-44, 20 P.3d 800, 805-06 (2001). Accordingly, we determine that a writ of mandamus is more appropriate in this case, and we decline to further address Ware's alternative request for a writ of prohibition.

office, trust, or station, or to control a manifest abuse of or arbitrary or capricious exercise of discretion.²

During a judges' meeting, the district court unanimously approved a starting salary for Ware, which consisted of a base salary and longevity pay. However, Reilly refused to pay Ware longevity pay because Reilly believed that he had the authority to determine whether Ware would receive such longevity pay. Reilly based his belief on language contained in an interlocal agreement between the district court and Clark County. The parties are familiar with the facts, and we do not further recount them except as necessary for our disposition.

Standing

We initially address Reilly's argument that Ware does not have standing to challenge his decision to deny Ware longevity pay. This court has stated that "in a mandamus proceeding . . . 'the writ must be denied if the petitioner will gain no direct benefit from its issuance and suffer no direct detriment if it is denied.'"³ In light of this standard, we determine that Ware has standing in this matter because he will receive the direct benefit of higher pay if the petition for a writ of mandamus is issued, and he will suffer the detriment of lesser pay if the petition is denied.

²See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

³Secretary of State v. Nevada State Legislature, 120 Nev. 456, 460-61, 93 P.3d 746, 749 (2004) (quoting Waste Management v. County of Alameda, 94 Cal. Rptr. 2d 740, 747 (Ct. App. 2000)). See also NRS 34.170 (providing that a writ of mandamus may issue only upon application of a "beneficially interested" party).

The interlocal agreement

In 1996, the district court and Clark County entered into an interlocal agreement authorizing Clark County's personnel department to provide personnel services to the district court. The interlocal agreement is comprised of (1) the Eighth Judicial District Court Personnel Rules and (2) the Letter of Understanding and Rule of the Court (Letter of Understanding). Ware argues that the express language of this agreement recognizes the district court's authority to determine receipt of longevity pay. We agree.

Resolution of this issue requires interpretation of the relevant provisions of the agreement. Under Nevada law, contracts will be construed based upon written language and enforced as written whenever possible.⁴ Courts are required to hold the parties to "language which is clear and free from ambiguity and cannot, using the guise of interpretation, distort the plain meaning of an agreement."⁵

In his answer to the petition, Reilly concedes that "longevity retention for [assistant court administrator] positions at District Court was not an issue between the County and District Court prior to July 2002." But Reilly contends that, since the interlocal agreement refers to the County's Merit Personnel System (MPS), a July 2002 change in the MPS authorized him to determine whether Ware would receive longevity pay.

⁴Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 278, 21 P.3d 16, 20 (2001).


⁵Watson v. Watson, 95 Nev. 495, 496, 596 P.2d 507, 508 (1979).


The Letter of Understanding, dated October 15, 1996, and contained in the interlocal agreement, unambiguously states that “[t]he DISTRICT COURT will adopt and follow a Merit Personnel System containing the same policies and procedures and personnel directives currently adopted by the Board of County Commissioners for the COUNTY.” Additionally, the Letter of Understanding explicitly states that “[t]his Agreement shall be effective indefinitely commencing from the date of execution” and “[a]ll amendments to this Agreement must be in writing and must be properly executed by both parties.” Here, however, the record does not contain evidence of any properly executed written amendment to the interlocal agreement.

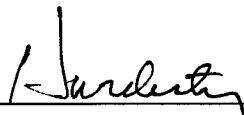
We conclude that the interlocal agreement has not been amended, and therefore, according to its plain language, the “same policies and procedures and personnel directives” that were in effect in 1996 when Ware was hired are in effect now. Thus, Ware’s longevity pay is governed by those policies, not the 2002 changes to Clark County’s MPS.


Accordingly, we grant the petition for a writ of mandamus. The clerk of this court shall issue a writ of mandamus instructing the Clark County Manager to pay Ware the full salary amount to which the

Clark County District Court determined he was entitled as an assistant court administrator.⁶


_____, C.J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Cherry


_____, J.
Saitta

⁶Because the total annual salary Ware seeks in his petition exceeds the total annual salary stated in the minutes of the judges' meeting, we decline to determine the exact amount to be paid. See Zugel v. Miller, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983) ("This court is not a fact-finding tribunal; that function is best performed by the district court."); Stephens v. Bank, 64 Nev. 292, 304, 182 P.2d 146, 151 (1947) (recognizing that this court's jurisdiction is generally appellate).

Additionally, this court has concerns about the delegation of duties presented in this case under the separation of powers doctrine. However, we decline to reach the merits of this issue because this case can be resolved on other grounds. State of Nevada v. Plunkett, 62 Nev. 258, 270-71, 149 P.2d 101, 104 (1944) ("It is well settled that a constitutional question will not be determined unless clearly involved, and a decision thereon is necessary to a determination of the case.").

cc: Beckley Singleton, Chtd./Las Vegas
Nelson Law
Clark County District Attorney David J. Roger/Civil Division
Eighth District Court Clerk