

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN PARSONS,
Appellant,
vs.
THE STATE OF NEVADA,
DEPARTMENT OF PUBLIC SAFETY,
Respondent.

No. 47303

FILED

MAR 17 2009
TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a petition for judicial review of a reconsideration hearing in a sex offender community notification Tier Level assessment case. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

As the parties are familiar with the facts of this case, we do not recount them except as pertinent to our disposition.¹

Appellant John Parsons argues the district court erred when it concluded it lacked jurisdiction to review the State of Nevada Community Notification Reconsideration Assessment Panel's (Panel) decision that affirmed respondent Nevada Department of Public Safety's (the State of Nevada) classification of Parsons as a Tier 2 sex offender. Parsons argues the district court had jurisdiction to consider his petition for judicial review because the Panel's reconsideration hearing was a "contested case" pursuant to NRS 233B.130. Specifically, Parsons argues that the reconsideration hearing was a "contested case" because it was "required by law" to be performed "after an opportunity for a hearing." Conversely,

¹The Honorable Kristina Pickering, Justice, did not participate in the decision of this matter.

respondent State of Nevada argues that the reconsideration hearing was not a “contested case,” in part, because none of Parsons’ legal rights, duties, or privileges have been affected.

We conclude that the reconsideration hearing is a “contested case” because (1) the reconsideration hearing was “required by law”; (2) respondent is a “party” pursuant to NRS 233B.035 whose “legal rights, duties or privileges” were determined by the reconsideration hearing; and (3) the reconsideration hearing afforded sufficient due process.²

Standard of review

This court reviews questions of statutory construction de novo. Ransdell v. Clark County, 124 Nev. ____, ____, 192 P.3d 756, 761 (2008). This court will not construe a statute beyond its plain meaning unless it is ambiguous or would yield an absurd result. California Commercial v. Amedeo Vegas I, 119 Nev. 143, 145, 67 P.3d 328, 330 (2003); see also McKay v. Bd. of Supervisors, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986) (noting that a statute’s words should be given their plain meaning unless their plain meaning would violate “the spirit of the act”).

A statute is ambiguous when it “is capable of two or more reasonable but inconsistent interpretations.” Gallagher v. City of Las Vegas, 114 Nev. 595, 599, 959 P.2d 519, 521 (1998). “When construing a specific portion of a statute, the statute should be read as a whole, and, where possible, the statute should be read to give meaning to all of its

²Because we conclude the district court had jurisdiction, we need not address Parsons’ argument that the district court erred by relying on NRS 179D.760.

parts.” Building & Constr. Trades v. Public Works, 108 Nev. 605, 610, 836 P.2d 633, 636 (1992).

The district court has jurisdiction over the reconsideration hearing because it is a contested case

NRS 233B codifies the Nevada Administrative Procedure Act. NRS 233B.130(1)(a)-(b) provides that “a party of record by an agency in an administrative proceeding” who is “aggrieved by a final decision in a contested case” is entitled to judicial review. Here, neither party contests that Parsons is a party of record in an administrative proceeding who is aggrieved by the Panel’s decision. Rather, the question is whether the reconsideration hearing is a “contested case.”

Pursuant to NRS 233B.032, a “contested case” is “a proceeding . . . in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed.” Thus, our determination of whether the reconsideration hearing is a “contested case” revolves around three inquiries: (1) whether the reconsideration hearing was “required by law”; (2) whether a party’s “legal rights, duties or privileges” are determined by the agency; and (3) whether the reconsideration hearing provided sufficient due process to satisfy the requirement of “an opportunity of a hearing.”

The reconsideration hearing was required by law

The term “required by law” means “required by statute.” See City Plan Dev. v. State, Labor Comm’r, 121 Nev. 419, 428 n.15, 117 P.3d 182, 188 n.15 (2005) (noting that the matter was a “contested case” because NRS 607.205 and NRS 607.207 authorized the Labor Commissioner to render a decision upon notice and a hearing); cf. Private Inv. Licensing Bd. V. Atherley, 98 Nev. 514, 515, 654 P.2d 1019, 1020

(1982) (noting the matter was not a “contested case” because NRS Chapter 648 did not require notice and a hearing).

Here, we conclude that the reconsideration hearing was “required by law.” At all times relevant to this appeal, NRS 179D.740 required that a sex offender who is assigned a Tier 2 or Tier 3 level of notification must be notified (1) of his Tier Level and (2) of the procedures he must follow to request reconsideration of his Tier Level.³ See 1997 Nev. Stat., ch. 451, § 72, at 1164. As applied to Parsons, NRS 179D.710 required the Attorney General to establish community notification guidelines and procedures. Accordingly, pursuant to NRS 179D.710, the Attorney General’s Office issued Guidelines & Procedures for Community Notification of Adult Sex Offenders (the Guidelines). The Guidelines require a reconsideration hearing if a timely request is received. Guidelines 6.00(4). Because we read statutes together, Building & Constr. Trades, 108 Nev. at 610, 836 P.2d at 636, we conclude that the procedures set forth in the Guidelines are “required by law” pursuant to NRS

³This court is aware that NRS 179D.710, NRS 179D.730, NRS 179D.740, and NRS 179D.760 were repealed, effective July 1, 2008. See 2007 Nev. Stat., ch. 485, § 56, at 2780. The statutes were repealed by the adoption of A.B. 579 and S.B. 471. However, in this case, we continue to apply them because, on October 7, 2008, the United States District Court, District of Nevada, issued a permanent injunction against the retroactive enforcement of A.B. 579 and S.B. 471. See Am. Civil Liberties Union of Nev. v. Masto, No. 2:08-cv-00822-JCM-PAL (D. Nev. Oct. 7, 2008). Because Parsons was sentenced in 1999, this permanent injunction applies to him.

179D.740 and NRS 179D.710.⁴ Accordingly, the reconsideration hearing was “required by law” because Parsons made a timely request thereby entitling him to a reconsideration hearing pursuant to Guidelines 6.00(4).

The reconsideration hearing affected the State of Nevada’s “legal rights, duties or privileges”

Pursuant to NRS 233B.032, to be a “contested case,” the agency proceeding must determine a party’s “legal rights, duties or privileges.” NRS 233B.032 does not state which party’s “legal rights, duties or privileges” the agency proceeding must determine. Accordingly, we turn to the NRS 233B.035 definition of “party,” which is “each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any contested case.” As such, we conclude that, in this case, the reconsideration hearing is a “contested case” if it affects either Parsons’ or the State of Nevada’s “rights, duties or privileges.”

Because statutes should be given their plain meaning unless ambiguous, California Commercial, 119 Nev. at 145, 67 P.3d at 330, we afford the terms “legal right,” “duty,” and “privilege” their plain meanings. As pertinent to this case, a “duty” is “an obligation, to which the law will give recognition and effect.” Merluzzi v. Larson, 96 Nev. 409, 412, 610 P.2d 739, 742 (1980), overruled on other grounds by Smith v. Clough, 106 Nev. 568, 570 n.4, 796 P.2d 592, 594 n.4 (1990).

⁴Parsons urges this court to expand the definition of “required by law” beyond “required by statute” because he argues it is ambiguous. We have considered the argument and decline to do so.

Accordingly, we conclude that the reconsideration hearing determined the State of Nevada's duties because, by the Panel affirming the State of Nevada's classification of Parsons as a Tier 2 sex offender, the State of Nevada was required to provide greater community notification than it would have for a Tier 1 sex offender. See 1997 Nev. Stat., ch. 451, § 71, at 1663; Guidelines 8.00(2), (4), (5), (7), (11), 8.10, 8.20.

The reconsideration hearing afforded sufficient due process

Whether the proceeding affords the parties involved due process is relevant to the question of whether a matter constitutes a "contested case." See State, Purchasing Div. v. George's Equipment, 105 Nev. 798, 804, 783 P.2d 949, 952 (1989). NRS 233B.121 governs the due process that parties must be afforded in a "contested case." NRS 233B.121 (1) requires reasonable notice of the hearing and provides what the notice must include; (2) entitles parties to representation by counsel; (3) entitles parties to the opportunity to respond and present evidence and argument on all issues involved; (4) permits informal disposition, unless otherwise precluded by law; (5) states what is required to be in the record; (6) requires transcription of oral proceedings upon a party's request; and (7) requires that findings of fact be based on substantial evidence and on officially noticed matters.

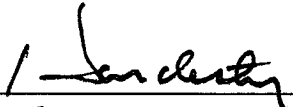
We conclude that requiring the presence of all the NRS 233B.121 factors in order for a matter to constitute a "contested case" would lead to an absurd result. Section 6.10 of the Guidelines sets forth the procedural requirements for a reconsideration hearing. Section 6.10 states, in part, (1) upon his request, the sex offender must be provided with copies of all available materials in his risk assessment file; and (2) the sex offender is entitled to present evidence the Panel deems relevant and material. While section 6.10 includes some, but not all, of the NRS

233B.121 requirements, we find the nature of the matter is what makes it a “contested case,” and not whether it fully complies with NRS 233B.121. See George’s Equipment, 105 Nev. at 802, 804, 783 P.2d at 951-53 (noting the matter did not constitute a “contested case,” in part because it was an informal hearing with an “open discussion”). As opposed to George’s Equipment, the reconsideration hearing here was a formal matter in which Parsons received notice, was represented by counsel, and presented evidence and arguments for the Panel to consider.

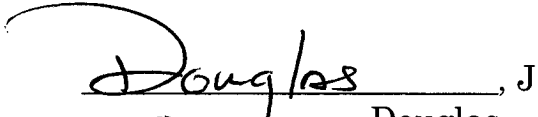
Conclusion

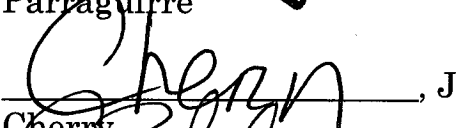
We conclude that the reconsideration hearing was a “contested case” because (1) it was “required by law;” (2) it determined the State of Nevada’s duties; and (3) it afforded sufficient due process. Because the reconsideration hearing was a “contested case,” the district court had jurisdiction and should have considered the petition for judicial review on the merits. Therefore, we

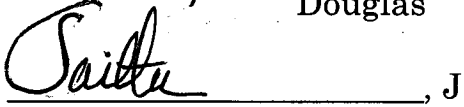
ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order.

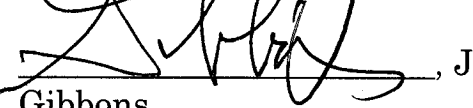

_____, C.J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jerome Polaha, District Judge
Carolyn Worrell, Settlement Judge

Martin H. Wiener
Attorney General Catherine Cortez Masto/DMV/Carson City
Washoe District Court Clerk