

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW BOLLIG,
Appellant,
vs.
TRANSPORTATION SERVICES
AUTHORITY OF NEVADA,
Respondent.

No. 47098

RED & WHITE MOVING,
Appellant,
vs.
TRANSPORTATION SERVICES
AUTHORITY OF NEVADA,
Respondent.

No. 47388

FILED

APR 24 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. J. Wasado
DEPUTY CLERK

ORDER OF REVERSAL

These are related appeals from district court orders denying petitions for judicial review in common carrier certification matters. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge (Docket No. 47098); David Wall, Judge (Docket No. 47388).

Respondent Transportation Services Authority of Nevada (TSA) cited and fined appellants Matthew Bollig and Red & White Moving (R&W) for violations of NRS 706.386, which prohibits fully regulated common motor carriers from operating as carriers of intrastate commerce without first obtaining certification from the TSA. Bollig and R&W petitioned the district court for judicial review of their citations, contending that the citations and fines were improper because they did not hold themselves out as fully regulated common motor carriers under NRS 706.386. The district court denied appellants' petitions and these appeals followed.

On appeal, Bollig and R&W each advance the same argument that they made before the district court. Because we conclude that their arguments have merit, we reverse the district courts' orders denying their petitions for judicial review. The parties are familiar with the facts and we do not recount them except as necessary to our disposition.

Standard of review

When parties challenge district court orders denying judicial review of the decisions of an administrative body, our function is identical to that of the district court: to review the evidence presented to the administrative body and ascertain whether that body abused its discretion by acting arbitrarily or capriciously.¹ In performing our review, we are limited to the record below.² In addition, we will not substitute our judgment for that of the agency as to the weight of evidence on a question of fact, but we may set aside the body's final decision if the decision prejudices the appellant's substantial rights because it is, among other things, affected by error of law or clearly erroneous in view of the reliable, probative and substantial evidence in the record.³ Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.⁴

The TSA erred in concluding that Bollig and R&W held themselves out as common carriers

¹Gandy v. State ex rel. Div. Investigation, 96 Nev. 281, 282, 607 P.2d 581, 582 (1980).

²Schepcoff v. SIIS, 109 Nev. 322, 325, 849 P.2d 271, 273 (1993).

³NRS 233B.135(3)(d)-(e).

⁴Schepcoff, 109 Nev. at 325, 849 P.2d at 273.

NRS 706.386 provides that “[i]t is unlawful . . . for any fully regulated common motor carrier to operate as a carrier of intrastate commerce . . . without first obtaining a certificate of public convenience and necessity from the [TSA].” Under NRS Chapter 706, a “fully regulated carrier” is “a common carrier . . . of household goods who is required to obtain from the [TSA] a certificate of public convenience and necessity . . . and whose rates, routes and services are subject to regulation by the [TSA].”⁵ A “common carrier” is statutorily defined as “any person or operator who holds himself out to the public as willing to transport by vehicle from place to place . . . passengers or property, including . . . a common motor carrier of property.”⁶ Similarly, a “common motor carrier of property” is “any person or operator . . . who holds himself out to the public as willing to transport by motor vehicle from place to place . . . the property of all who may choose to employ him.”⁷ In describing what it means to “transport . . . property,” NRS 706.137 essentially defines the “transportation of household goods” by motor vehicle as generally including any type of moving-related service.

Based on these statutory provisions, a “fully regulated common motor carrier”—as that phrase is used in NRS 706.386—is one who (1) holds himself out to the public, as (2) willing to transport

⁵NRS 706.072.

⁶NRS 706.036 (emphasis added).

⁷NRS 706.046 (emphasis added).

household goods for hire.⁸ In these cases, the TSA failed to make findings that either Bollig or R&W held themselves out to the public as common carriers. Although the TSA's findings that both appellants transported household goods under NRS 706.137 are based on substantial evidence, the record fails to demonstrate that appellants' individual conduct satisfied the "holding out" prong of the "fully regulated common motor carrier" analysis. Indeed, while the company with whom Bollig and R&W apparently associated—Father & Sons & A Daughter Too—placed telephone directory advertisements about a referral service, those advertisements did not mention Bollig or R&W. In addition, while the record before us demonstrates that Bollig and R&W were hired to transport household goods once, there is no evidence that they engaged in a course of conduct satisfying the "holding out" prong of the common carrier analysis.⁹


Since the TSA failed to perform a "holding out" analysis and the evidence in the records before us fails to conclusively establish that

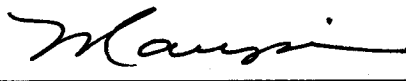
⁸See also Ruggles v. Public Service Commission, 109 Nev. 36, 846 P.2d 299 (1993).

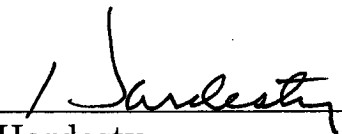
⁹See Cook Tractor Co. v. Director of Revenue, 187 S.W.3d 870, 874 (Mo. 2006) (noting that "[h]olding out can be accomplished by advertising or soliciting by agents, or may result from a course of business or conduct, but essentially must be a public offering of the service that communicates that it is available to those who wish to use it"). Notably, the TSA's conclusions that Bollig and R&W acted as "agents" and "employees" of Father & Sons & A Daughter Too does not establish that Bollig and R&W individually held themselves out as common motor carriers, and the TSA made no findings as to whether FSD2 acted as a soliciting agent for Bollig and R&W.

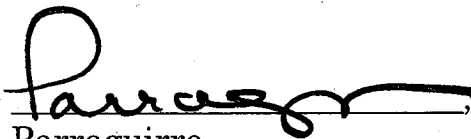
Bollig and R&W held themselves out as common motor carriers, we conclude that the TSA erred in citing and fining them. Accordingly, we conclude that the district court erred in denying both appellants' petitions for judicial review, and we

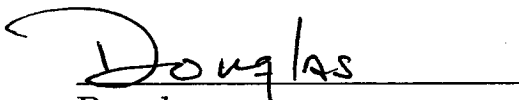
ORDER the judgments of the district court REVERSED.

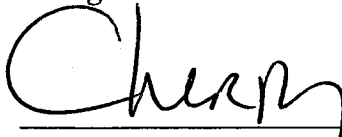

_____, C.J.
Gibbons



_____, J.
Maupin


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Michelle Leavitt, District Judge
Hon. David Wall, District Judge
William F. Buchanan, Settlement Judge
Randall J. Roske
Attorney General Catherine Cortez Masto/Carson City
Eighth District Court Clerk