IN THE SUPREME COURT OF THE STATE OF NEVADA

HARVARD L. LOMAX, REGISTRAR OF
VOTERS OF CLARK COUNTY,
NEVADA,
Appellant,
  vs.
THE INDEPENDENT AMERICAN
PARTY OF NEVADA, BY AND
THROUGH ITS STATE CHAIRMAN,
CHRISTOPHER H. HANSEN, ON
BEHALF OF THE 26,632
INDEPENDENT AMERICAN PARTY
VOTERS CLARK COUNTY NEVADA,
AND LANCE HINTON, NEVADA
CITIZEN,
Respondents.

No. 47843

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a petition for a writ of mandamus in a voter registration matter. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion.[1] The district court's grant of a petition for a writ of mandamus is discretionary and will not be disturbed absent a clear abuse of discretion.[2] This court

[1] NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

[2] County of Clark v. Doumani, 114 Nev. 46, 952 P.2d 13 (1998).

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reviews a district court's interpretation of a statute de novo, in the context of an original writ proceeding.[3]

Under Nevada law, when a person wishes to register to vote, he or she must complete a voter registration application prescribed by the Secretary of State.[4] A registrar or county clerk "shall . . . [a]ccept completed applications to register to vote."[5] NRS 293.507(4) sets forth the specific form requirements for voter registration applications and provides that the form must include:

> (a) A line for use by the county clerk to enter:
>
> (1) The number indicated on the voter's current and valid driver's license issued by the Department of Motor Vehicles, if the voter has such a driver's license;
>
> (2) The last four digits of the voter's social security number, if the voter does not have a driver's license issued by the Department of Motor Vehicles and does have a social security number; or
>
> (3) The number issued to the voter pursuant to subsection 5, if the voter does not have a current and valid driver's license issued by the Department of Motor Vehicles or a social security number.

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[3]See Borger v. Dist. Ct., 120 Nev. 1021, 102 P.3d 600 (2004) (applying a de novo standard to review a district court's statutory interpretation in an original writ proceeding); Beazer Homes Nevada, Inc. v. Dist. Ct., 120 Nev 575, 97 P.3d 1132 (2004) (same).

[4]NRS 293.507(1).

[5]NRS 293.504(2)(d).

If an applicant does not have a valid driver's license or a social security number, the applicant must sign an affidavit declaring that he or she does not have the above described identification.[6] Under NRS 293.507(5), when this affidavit is submitted, "the county clerk shall issue an identification number to the voter which must be the same number as the unique identifier assigned to the voter for purposes of the statewide voter registration list."

In its order granting a writ of mandamus, the district court found that respondent Lance Hinton "completed and properly answered all key portions of the application pertaining to citizenship and residency by giving his correct name, address, date of birth, and place of birth. Thus, official identification as proof of residency and identity were never raised as an issue."

The district court found that once Mr. Hinton submitted to appellant Harvard Lomax his voter registration application, which included all material information, along with the signed affidavit, Mr. Lomax had a duty under NRS 293.507(5) to accept the application and provide Mr. Hinton with an identification number. The district court noted that even if Mr. Lomax suspected that Mr. Hinton had a social security number, Mr. Lomax had no statutory authority to do anything other than accept Mr. Hinton's application and to register Mr. Hinton as a Nevada voter.

Mr. Lomax raises a number of arguments on appeal. Primarily, he contends that he was under no duty to accept an application

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[6]NRS 293.507(5).

to vote that did not conform to statutory requirements[7] and that he had the authority to withhold the activation of a questionable voter registration application until the discrepancies were addressed. We are not persuaded by Mr. Lomax's arguments.

Nevada's voter registration statute mandates that an applicant must complete a voter registration form provided by the Secretary of State.[8] If the applicant does not have a driver's license or a social security number, the applicant must sign an affidavit attesting to that effect, at which point the registrar must assign an identification number to the applicant.[9] Once the identification number is assigned, and so long as the application is complete, the application can be activated.

After the application to vote is activated, if questions exist regarding a voter's identity or residence, or concerning possible fraud, the voter may be challenged[10] or referred to the district attorney's office for investigation.[11] Mr. Lomax did not challenge Mr. Hinton's registration,

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[7]Mr. Lomax contends that 42 U.S.C. § 15483 "expressly prohibits him from accepting or processing a deficient application." However, Mr. Lomax does not specifically explain how the federal statute applies to states, or how the federal and state statutes are intended to work together. And Mr. Lomax ignores that under Nevada's statute, an identification number can be issued to an applicant who claims to not have a current driver's license or social security number. Accordingly, Mr. Lomax has failed to demonstrate that 42 U.S.C. § 15483 prohibited him from accepting Mr. Hinton's registration and affidavit.
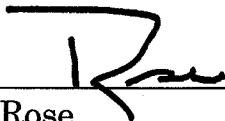
[8]NRS 293.507.

[9]NRS 293.507(4) and (5).

[10]NRS 293.303(1)(e).

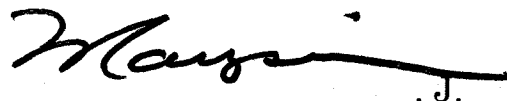[11]NRS 293.541(1)(a).

and while he did refer the matter to the district attorney's office for investigation, he refused to activate Mr. Hinton's application based on his own conclusions regarding Mr. Hinton's social security number. Mr. Lomax had a duty under the statute to activate Mr. Hinton's voter registration application, regardless of his personal suspicions. Thus, we conclude that the district court did not abuse its discretion when it issued a writ of mandamus and directed Mr. Lomax, as Clark County Registrar, to accept Mr. Hinton's application and register him to vote. Accordingly, we

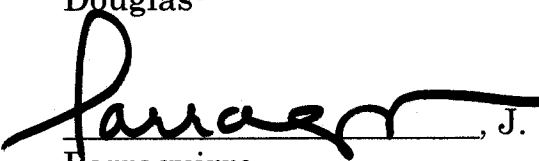ORDER the judgment of the district court AFFIRMED.[12]

_____, C.J.
Rose

_____, J.   _____, J.
Becker   Maupin

_____, J.   _____, J.
Gibbons   Douglas

_____, J.   _____, J.
Hardesty   Parraguirre

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[12]We have considered Mr. Lomax's remaining contentions and conclude that they lack merit.

cc: Hon. Timothy C. Williams, District Judge
        Clark County District Attorney David J. Roger/Civil Division
        Hansen & Hansen, LLC
        Clark County Clerk