

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEN BAXTER, AN INDIVIDUAL; AND
PERFORMANCE MORTGAGE
ASSOCIATES, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellants,


vs.

NEVADA STATE LABOR
COMMISSIONER; AND VINCENT
TOLMAN,
Respondents.

No. 49094

FILED

MAR 05 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a petition for judicial review of a Labor Commissioner decision. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

In this matter, the district court granted respondents' motion to dismiss concluding that appellants did not file their petition for judicial review within the statutorily prescribed time limits. We conclude the court did not err in dismissing appellants' petition.

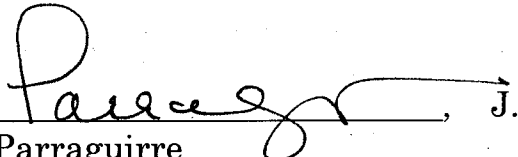
Petitions for judicial review must "[b]e filed within 30 days after service of the final decision of the agency." NRS 233B.130(2)(c). Statutory time requirements for filing petitions for judicial review of administrative decisions are mandatory and jurisdictional. Kame v. Employment Security Dep't, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989). Here, the Labor Commissioner's order affirming the determination in favor of the respondent Vincent Tolman was filed on October 4, 2006, and served that

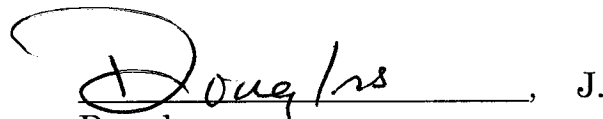
same day, by mail, on appellant Ken Baxter. Because the Labor Commissioner's decision was served by mail, NRCP 6(e) added three days to the prescribed filing period. Thus, the last day appellants could have filed a timely petition for judicial review was on November 6, 2006. See NRS 233B.130(2)(c); NRCP 6(a) and (e). Appellants filed their petition on December 6, 2006, well after the 33-day time period. Thus, appellants failed to timely file their petition for judicial review.

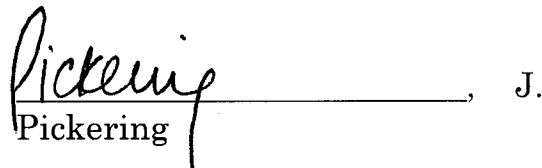
Appellants contend, however, that the Labor Commissioner's order was not a final decision under NRS 233B.125, and thus, it failed to effectively trigger the statutory time requirement because the order allegedly (1) failed to set forth findings of fact and conclusions of law, and (2) was not based on substantial evidence. This argument is without merit. Although appellants rely on our decision in State, Board of Psychological Examiners v. Norman 100 Nev. 241, 245, 679 P.2d 1263 (1984), to argue that the statutory time requirement for filing petitions for judicial review should not apply to their case, their reliance on Norman is misplaced. Nothing in Norman suggests that a party is excused from the mandatory and jurisdictional requirement of timely filing a judicial review petition based on that party's subjective determination that the agency's order was not a final decision. See id.; see Kame, 105 Nev. at 25, 769 P.2d at 68. And, appellants present no authority to suggest that a party may simply disregard the statutory time requirement for filing petitions for judicial review if that party believes that the agency's order was not a final decision under NRS 233B.125. Because the time for filing a petition for judicial review is mandatory and jurisdictional, and appellants' petition was untimely, the district court lacked subject matter jurisdiction over

appellants' petition. See Kame, 105 Nev. at 25, 769 P.2d at 68. Thus, dismissal was mandatory. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Hon. Kenneth C. Cory, District Judge
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Attorney General Catherine Cortez Masto/Carson City
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Vincent Tolman
Eighth District Court Clerk