

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRANSPORTATION SERVICES  
AUTHORITY OF NEVADA, N/K/A  
NEVADA TRANSPORTATION  
AUTHORITY; AND BROWN'S CREW  
CAR OF WYOMING, INC., D/B/A  
ARMADILLO EXPRESS,

Appellants,

vs.

IGNACIO GARIJO, D/B/A  
WINNEMUCCA CAB,  
Respondent.

No. 51020

**FILED**

SEP 25 2009

TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a petition for judicial review of a Nevada Transportation Services Authority decision. Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge.

Armadillo Express sought to operate as a contract carrier in Winnemucca. Nevada and Winnemucca Cab intervened in the action. Armadillo and Winnemucca Cab then entered into a stipulation that excluded Armadillo from operating in Winnemucca and set up notice requirements such that Winnemucca Cab would be notified of any other applications for operation filed by Armadillo. Six years later, Armadillo applied for expanded authority with the Transportation Services Authority (TSA). After notifying the public and receiving no petitions to intervene, TSA granted Armadillo's request for expanded service, including service in Washoe County and Winnemucca. Winnemucca Cab then sought emergency revocation of Armadillo's expanded authority and the TSA denied the petition. Winnemucca Cab filed a petition for judicial

review that the district court granted, finding Armadillo did not comply with the notice requirements of the stipulation and that the TSA did not follow administrative regulations regarding notice. This appeal follows. We conclude that the district court erred in granting the petition for judicial review and reverse and remand the district court's order granting the petition. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

#### Standard of review

When a party challenges a district court's decision regarding a petition for judicial review, we review the evidence presented to the agency and determine whether the agency abused its discretion by acting arbitrarily or capriciously. Gandy v. State ex rel. Div. Investigation, 96 Nev. 281, 282, 607 P.2d 581, 582 (1980). In such appeals, our role is identical to that of the district court and we are limited to the record below. Id. at 582-83. As such, we cannot substitute our judgment for that of the agency as to the weight of evidence on a question of fact. Schepcoff v. SIIS, 109 Nev. 322, 325, 849 P.2d 271, 273 (1993). We must affirm a decision by the agency that is not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. State, Dep't Mtr. Veh. v. Root, 113 Nev. 942, 947, 944 P.2d 784, 787 (1997). See also NRS 233B.135(3)(e).

#### Abuse of discretion

The district court determined that the TSA failed to provide sufficient notice under NAC 706.1355. In making its finding, the district court concluded that the TSA adopted and incorporated the notice provision of the stipulation entered into by Armadillo and Winnemucca Cab.

The TSA argues that it did not adopt or incorporate the terms of the stipulation into the authority granted to Armadillo in 1998 while Armadillo argues the TSA appropriately gave statewide notice under the agency regulation. Furthermore, Winnemucca Cab contends that Armadillo's application for expanded service merely covered Humboldt and Washoe counties, thus making statewide notice improper because the TSA should have published only in those two counties.<sup>1</sup>

“Unless the interpretation is plainly erroneous or inconsistent with the regulation, deference will generally be given to an administrative agency's interpretation of regulations it has drafted.” Sierra Pac. v. Public Serv. Comm'n, 97 Nev. 479, 484, 634 P.2d 1200, 1203 (1991) (Manoukian, J., concurring). As such, “[a]n administrative agency . . . charged with the duty of administering an act, is impliedly clothed with power to construe the relevant laws and set necessary precedent to administrative action.” SIIS v. Snyder, 109 Nev. 1223, 1228, 865 P.2d 1168, 1171 (1993).

We conclude that the district court erred in finding that the TSA did not comply with the regulatory notice requirements.

NAC 706.1355(2) provides that “[i]f the Deputy Commissioner determines that the proposal will have a statewide effect . . . he shall . . . publish[ ] at least once in four or more newspapers of general circulation in this State, no two of which are published in the same county.” NAC 706.1355(3) alternatively provides that “[i]f the Deputy Commissioner

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<sup>1</sup>The TSA was not a party to the stipulation between Armadillo and Winnemucca Cab and whether it was obligated to enforce the stipulation is addressed below. Rather, under the regulation, TSA posted the application at four locations in Nevada and published the notice in four newspapers statewide.

determines that the proposal will have an effect on a limited number of counties, he shall . . . publish[ ] once in a newspaper of general circulation in each county affected.”

Based on the regulations, we conclude that there was substantial evidence presented that the TSA provided adequate notice under the regulation by publishing in four newspapers, including the Reno Gazette Journal, after the agency determined that the expanded service would have a statewide effect. Because NAC 706.1355(2) specifically lays out notification by publication requirements only after the Deputy Commissioner has determined what effect the application will have, the TSA is tasked with making such determinations and the district court cannot disturb such a factual determination unless clearly erroneous. Therefore, we conclude that the TSA complied with NAC 706.1355(2) and that the district court erred in finding that the TSA did not provide adequate notice under the regulation because the TSA’s actions were not clearly erroneous and the district court failed to defer to the TSA’s decision.

#### Stipulation

The district court also found that that the TSA was obligated to enforce the stipulation between Armadillo and Winnemucca Cab because it was incorporated into the file on Armadillo’s initial application. The specific provision of the stipulation in contention here requires that Winnemucca Cab “remain on the service list of this docket and receive all filings and orders to ensure that Applicant [Armadillo] has complied with the terms of the stipulation.” The docket number of the original application is 98-10010 while the docket number of the application for expanded service is 04-06042.

A trial court should construe a contract that is clear on its face from the written language, and it should be enforced as written. Canfora v. Coast Hotels and Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). Under a plain language reading of the stipulation, only filings and orders under docket number 98-10010 required that Armadillo notify Winnemucca Cab. Thus, the stipulation does not speak to the notice requirement for an application for expanded service because it had a separate docket number. Moreover, absent some obligation to give notice beyond the statutory requirements, compliance with such requirements satisfies due process obligations. State Dep't of Conservation v. Foley, 121 Nev. 77, 82-83, 109 P.3d 760, 763 (2005). Additionally, a nonparty cannot be held to the obligations of a contract. EEOC.v. Waffle House, Inc., 534 U.S. 279, 294 (2002).

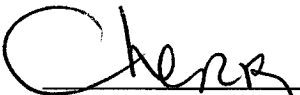
Here, we conclude that there was no authority for the district court's conclusion that the TSA became subject to and obligated to enforce the stipulation by virtue of granting Armadillo's application after Armadillo and Winnemucca Cab independently entered into a stipulation. A plain language reading of the stipulation belies the district court's conclusion that the TSA had to comply with expanded notification requirements under the stipulation because there are no terms in the stipulation that suggest that the TSA ratified or agreed to be bound by the stipulation merely by granting Armadillo's application. The TSA was never a party to the stipulation and complied with the notification requirements under the statute. As such, the district court was required to give deference to factual findings by the TSA, as the agency tasked with determining what type of notification was required by the application for expanded service, i.e., statewide or not. Thus, we conclude that the

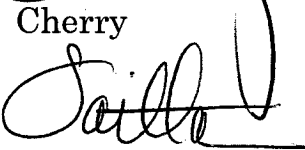
district court erred in determining that the TSA was obligated to enforce the stipulation between the parties. If anything, Winnemucca Cab has a contract dispute with Armadillo regarding the stipulation and, as such, the separate action Winnemucca Cab filed in district court to enforce the stipulation was the proper course of action.


We conclude that that district court abused its discretion in granting the petition for judicial review because the TSA complied with the regulation providing for notification and there was no authority or evidence in the record to support the district court's conclusion that the TSA was bound by and obligated to enforce the stipulation agreement to which it was not a party.

Accordingly, we

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

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Richard Wagner, District Judge  
Robert L. Eisenberg, Settlement Judge  
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