

IN THE SUPREME COURT OF THE STATE OF NEVADA

CAROLYN BAUER,
Appellant,

vs.

THE STATE OF NEVADA, BY AND
THROUGH DEAN HELLER, ITS
SECRETARY OF STATE,
Respondent.

No. 51914

FILED

DEC 20 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in an elections law matter, an order awarding attorney fees, and an order denying a motion for a new trial. First Judicial District Court, Carson City; William A. Maddox, Judge.

Appellant Carolyn Bauer was a candidate for the Nevada State Senate in 2002. Bauer did not receive campaign contributions nor did she have campaign expenditures. She submitted campaign contribution and expense reports to respondent Secretary of State on three occasions as required by NRS 294A, the Campaign Practices Act. However, on each of the three occasions, she failed to provide any of the required information, including any financial information, leaving the income and expense lines blank.

Bauer asserted a right against self-incrimination as the reason for her refusal to fill out the reports. In addition, Bauer did not sign the reports under penalty of perjury, despite acknowledging her duty and responsibility to do so on the date she filed her declaration of candidacy. By filling out her candidate acknowledgement, Bauer accepted that a violation of the reporting laws would subject her to civil penalties up to \$5,000 per violation. Furthermore, Bauer attempted to have certain

questions regarding the reports answered by the Secretary of State in order to properly fill them out. The Secretary of State responded to Bauer's questions, but he did not address Bauer's alleged right against self-incrimination. Ultimately, the Secretary of State deemed Bauer's reports as non-filed because Bauer failed to fill out any of the forms and refused to sign under penalty of perjury, as required by Nevada election law. The Secretary of State gave Bauer the opportunity to file an amended report without penalty or adverse effect, but she refused the Secretary of State's offer. Despite Bauer's failure to complete the reports, she was still placed on the ballot.

The Secretary of State filed a verified complaint against Bauer claiming that she had violated certain provisions of the Campaign Practices Act in failing to properly fill out the reports during her candidacy. Both Bauer and the Secretary of State filed a motion for summary judgment in the district court. The district court granted the Secretary of State's motion for summary judgment and denied Bauer's motion. Subsequently, the district court entered an order granting the Secretary of State's motion for attorney fees. Thereafter, Bauer filed a motion to alter or amend the judgment, or alternatively for a new trial, pursuant to NRCPC 52 and 59, which the district court denied. The district court also affirmed the award of attorney fees and costs. This appeal followed.¹

On appeal, Bauer argues that the district court erred: (1) in granting the Secretary of State's motion for summary judgment because

¹The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

the Secretary of State had no authority to deem the submitted reports untimely, and because the Secretary of State misled Bauer as to what her legal obligations were when filling out the reports; (2) in denying her motion to alter or amend the judgment or, in the alternative, for a new trial; and (3) in granting the Secretary of State's motion for attorney fees.

For the reasons set forth below, we conclude that Bauer's contentions are without merit. Accordingly, we affirm the grant of summary judgment and the denial of Bauer's motion to alter or amend the judgment or for a new trial.² We further affirm the award of attorney fees.³

DISCUSSION

Motion for summary judgment

The Secretary of State moved for summary judgment on the grounds that Bauer failed to report campaign contributions and expenses, and that civil penalties are authorized for Bauer's noncompliance. The

²Bauer alleges that the district court erred in denying her motion to amend or alter the judgment or, in the alternative, for a new trial pursuant to NRCP 52 and 59. Bauer argues that the district court's order granting the State's motion for summary judgment failed to reflect the undisputed facts. Bauer also argues that additional findings needed to be made. As we conclude that it was proper for the district court to grant summary judgment, we conclude that this contention lacks merit.

³Bauer contends that the district court erred in granting attorney fees to the Secretary of State. Bauer argues that she should receive attorney fees to correct a miscarriage of justice. As we conclude that the district court was correct in granting summary judgment and denying Bauer's motion to alter or amend the judgment or for a new trial, we further conclude that the district court did not err in granting attorney fees pursuant to NRS 294A.420(2).

district court granted the Secretary of State's motion for summary judgment as the Secretary of State fulfilled its burden to show that there was no genuine issue of material fact under NRCP 56(c). The district court found that the statutes at issue are clear and unambiguous and that Bauer did not dispute her failure to comply with Nevada's campaign reporting requirements.

Bauer contends that the district court erred in granting summary judgment in favor of the Secretary of State. Bauer argues that the statutes giving the Secretary of State the power to enforce the Campaign Practices Act do not extend the power to deem a timely filed contribution and expense report as not filed just because that report is not filled out in a manner the Secretary of State deems appropriate. Bauer further argues that, since the Campaign Practices Act only mandates that a candidate report contributions and expenditures in excess of \$100, she was not required to enter any contributions or expenditures on her reports.

We conclude that the district court was correct in its grant of summary judgment for the following reasons: (1) the record indicates that no genuine issues of material fact existed and that the Secretary of State was entitled to judgment as a matter of law; (2) Bauer failed to complete the campaign contribution and expense reports as mandated by statute; (3) the Fifth Amendment right against self-incrimination does not apply in this situation, thus Bauer did not have the right to withhold required information on her campaign contribution and expense reports; and (4) the Secretary of State is not authorized to answer questions of the public requiring legal judgment and discretion.

Standard of review

We “review[] a district court’s grant of summary judgment de novo, without deference to the findings of the lower court.” George L. Brown Ins. v. Star Ins. Co., 126 Nev. ___, ___, 237 P.3d 92, 96 (2010) (quoting Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)). Summary judgment is proper only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. NRCP 56(c); see Wood, 121 Nev. at 729, 121 P.3d at 1029. “[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party.” Wood, 121 Nev. at 729, 121 P.3d at 1029.

Statutory construction is a question of law and is reviewed de novo, without deference to the district court’s conclusions. Southern Nev. Homebuilders v. Clark County, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005). “If a statute’s language is clear and the meaning plain, this court will enforce the statute as written.” In re Candelaria, 126 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 40, October 14, 2010); see also Orion Portfolio Servs. 2 v. Clark County, 126 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 39, October 14, 2010) (“When a statute is clear and unambiguous, this court gives effect to the plain and ordinary meaning of the words and does not resort to the rules of construction.”).

The district court did not err in granting summary judgment in favor of the Secretary of State

Campaign Practices Act—NRS Chapter 294A

Before seeking public office in this state, candidates must familiarize themselves with NRS 294A, entitled “Campaign Practices.” Under NRS 294A.120(2), a candidate for state office must, on three

specific dates during the year of that individual's candidacy, file a contribution and expense report disclosing any contributions received in excess of \$100. Similarly, under NRS 294A.200(2), a candidate for state office must include in their contribution and expense reports any campaign expense incurred in excess of \$100 during the year of that individual's candidacy. NRS 294A.120 and NRS 294A.200 also require that candidates for public office sign each campaign contribution and expense report under penalty of perjury. In addition, NRS 294A.350(1) mandates that "[e]very candidate . . . shall file the reports of campaign contributions and expenses . . . even though the candidate: . . . (b) [r]eceives no campaign contributions; [and] (c) [h]as no campaign expenses." In addition, by filing her candidate acknowledgement form, Bauer recognized that she must file multiple campaign contribution and expense reports, and that a violation of the reporting requirements is subject to a civil penalty of up to \$5,000 for each violation, as well as payment of court costs and attorney fees.

We conclude that because Bauer voluntarily ran for state office, she was required to follow the requisite guidelines found in the Campaign Practices Act and file signed forms that contained the required information. The campaign contribution and expense reports are elementary and are not intended to puzzle or mislead candidates—they are completed annually by hundreds of candidates for elected office without difficulty.

Fifth Amendment right to self-incrimination

On each of Bauer's campaign contribution and expense reports, she asserted a right against self-incrimination as she was afraid

of criminal prosecution, because she did not know whether the campaign reporting requirements were required by law.

We conclude that Bauer cannot assert the Fifth Amendment right to self-incrimination relating to her campaign contribution and expense reports. “In both the federal and state constitutions, the right against self-incrimination exists only in the context of criminal prosecutions by the government.” Blankenship v. O’Sullivan Plastics Corp., 109 Nev. 1162, 1165, 866 P.2d 293, 295 (1993). Pursuant to NRS 294A.420, the penalties associated with violating the reporting provisions would not subject Bauer to criminal prosecution. Thus, Bauer would not be entitled to the privileges of the Fifth Amendment—the right against self-incrimination does not give Bauer the right to withhold required information on her campaign reports as: (1) there is nothing inherently incriminating about the reports, (2) the disclosure of campaign expenses and contributions is a legitimate activity in which no criminal act was involved, and (3) the public has a right to inspect the contributions and expenses of candidates for public office.

Similarly, “[t]he Supreme Court has held that taxpayers cannot assert a violation of their rights against compulsory self-incrimination when they refuse to answer questions on a tax return for fear authorities will discover illegal activity.” U.S. v. Sturman, 951 F.2d 1466, 1487 (6th Cir. 1991). In addition, the United States Court of Appeals for the Sixth Circuit approved a jury instruction that stated:

[t]he Fifth Amendment privilege or right does not give any person the right to withhold required information on a [tax] return concerning items the disclosure of which would not incriminate him . . . disclosure of income from legitimate activities in

which no criminal act was involved would not constitute such self-incrimination.

United States v. Saussy, 802 F.2d 849, 854-55 (6th Cir. 1986). Therefore, we conclude that a candidate for public office cannot assert the Fifth Amendment privilege against self-incrimination to protect her from revealing information that she believes might be harmful to her in some way, but which is not incriminating.

The Secretary of State has no duty to give legal advice

Bauer sent a certified letter to the Secretary of State outlining her displeasure with the campaign contribution and expense reports. The Secretary of State responded to Bauer's letter, confirming that Bauer must complete the reports pursuant to Nevada election law. The Secretary of State did not address Bauer's assertion of the right against self-incrimination.

We conclude that the Secretary of State is not permitted to proffer legal advice to the public. We have made clear that

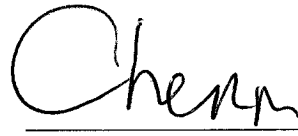
the practice of law is implicated whenever a person is faced with a legal issue that cannot be handled by resort to routine forms or customs, and when the person makes the decision not to rely on his or her own judgment but to obtain assistance from someone else, a stranger to the situation.

In re Lerner, 124 Nev. 1232, 1238, 197 P.3d 1067, 1072 (2008). As such, we further conclude that, although the campaign contribution and expense reports may be a customary form to those who wish to hold or serve public office in Nevada, the questions Bauer asked of the Secretary of State were extraordinary and providing answers to them would require legal judgment and discretion, thus distinguishing them from ordinary clerical service.

However, we further conclude that the Secretary of State had the authority to deem Bauer's reports incomplete. For questions that do not rise to the level of legal judgment or discretion, the Secretary of State has broad powers over the electoral process in this state including the regulation and administration of elections. See NRS 293.247(1)-(4).

Accordingly, we

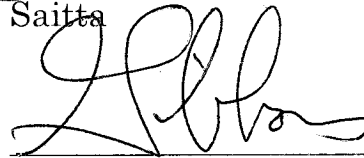
ORDER the judgment and orders of the district court
AFFIRMED.

 _____, J.

Cherry

 _____, J.

Saitta

 _____, J.

Gibbons

cc: Hon. William A. Maddox, District Judge
Carolyn Worrell, Settlement Judge
Martin G. Crowley
Attorney General/Carson City
Carson City Clerk