IN THE SUPREME COURT OF THE STATE OF NEVADA

SCHULZ PARTNERS, LLC,
Appellant,
vs.
THE STATE OF NEVADA, EX REL. ITS BOARD OF EQUALIZATION AND NEVADA DEPARTMENT OF TAXATION; DOUGLAS COUNTY AND DOUGLAS COUNTY ASSESSOR, DOUGLAS W. SONNEMANN,
Respondents.

No. 53128

FILED

JUL 28 2011

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order denying and dismissing a combined petition for judicial review and complaint seeking declaratory and injunctive relief as well as a refund of taxes paid in a property tax matter. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Schulz Partners, LLC is the owner of an improved lot on the edge of the Zephyr Cove area of Lake Tahoe. Schulz disputes its 2008/2009 property tax assessment.

In 2008, Schulz appealed its 2008/2009 assessment by the county assessor to the County Board of Equalization (CBOE). The CBOE held a hearing and affirmed the assessment. Schulz then appealed the CBOE's decision to the State Board of Equalization (SBOE), which also affirmed the assessment. The SBOE concluded that Schulz's property was appraised at the proper taxable value and was consistent with other parcels in the area. The SBOE noted but declined to credit Schulz's

argument that the assessment could be upheld only if the Schulz lot ran all the way to the water's edge. It ruled that, to the extent Schulz was asking it to re-determine the legal boundaries of the Schulz lot, it lacked jurisdiction to do so.

Thereafter, Schulz filed a petition for judicial review together with a complaint for declaratory judgment, injunctive relief and tax refund in the First Judicial District Court. In Count I, Schulz sought a declaratory judgment determining the scope of its property rights under NRS 321.595. In Count II, Schulz sought an injunction enjoining the county from "maintaining a common area parcel" on its lot (the beach area to which Zephyr Cove Property Owners Association, Inc. (ZCPOA) claims rights). In Count III, Schulz sought judicial review to recover the excess taxes paid or that will be paid because the assessment is not at a uniform and equal rate.

The respondents did not answer the petition/complaint but responded by way of motions to dismiss. The State respondents filed their first motion to dismiss on November 5, 2008, followed by a second motion to dismiss on December 1, 2008.[1] The County respondents did not file their motion to dismiss, in which the State defendants joined, until

[1]The State respondents' motions to dismiss argued that the only relief available to Schulz is a petition for judicial review, that ancillary complaints are barred, and that, at minimum, the Nevada Department of Taxation should be dismissed from the action because the Department was neither the agency that made the decision on appeal nor party to it.

December 8, 2008.[2] Meanwhile, on November 6, 2008, Schulz and the State defendants stipulated to extend the time for filing the administrative record pertaining to the petition for judicial review until 30 days after notice of entry of the order resolving the motion to dismiss. The district court denied Schulz's petition and dismissed the complaint before the filing of the administrative record. The court concluded, based on the record excerpts the parties attached to the petition/complaint and their motion papers, that the agency's decision was supported by substantial evidence, that Schulz's property was valued consistently with neighboring parcels, that the CBOE only valued the portion that Schulz retained control of and excluded the common area at issue, and that the SBOE and CBOE lacked jurisdiction to resolve the legal boundary issue. The court also dismissed Counts I and II of the complaint based on Schulz's failure to join necessary and/or indispensable parties, referring to prior litigation involving Schulz and ZCPOA.

Schulz argues that the district court's denial of its petition for judicial review denied it due process because the administrative record had not been filed. It claims that the district court ignored NRS 233B.131

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[2]In its December 8, 2008, motion to dismiss, the County respondents argued that Counts I and II of Schulz's petition/complaint are barred by res judicata and a petition for judicial review is the sole recourse. The County also argued that the district court lacked subject matter jurisdiction over the petition for judicial review because Schulz did not pay each installment of the taxes under protest. The State joined the County's motion on December 10, 2008.

and NRS 233B.133, and entered its decision as if the SBOE's notice of decision comprised the entire record.

DISCUSSION

This court applies de novo review to questions of law, including issues of statutory interpretation, State, DMV v. Taylor-Caldwell, 126 Nev. ___, ___, 229 P.3d 471, 472 (2010); State, Dep't of Motor Vehicles v. Terracin, 125 Nev. 31, 34, 199 P.3d 835, 836-37 (2009), and to appeals from order granting motions to dismiss under NRCP 12(b)(5). Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (noting that motions to dismiss for failure to state a claim is subject to a rigorous standard of review on appeal). Dismissal based on failure to join necessary or indispensable parties under NRCP 19 and 20 is entrusted to the sound discretion of the district court and reviewed for abuse of discretion. See Lund v. Dist. Ct., 127 Nev. ___, ___ P.3d ___ (Adv. Op. No. 28, June 2, 2011). NRS 233B.130 provides that any party of record aggrieved by a final decision in a contested case from an administrative proceeding is entitled to judicial review of the decision. One authorized basis for affirming, denying or setting aside, in part or in whole, a final decision of an agency is that the decision was "[c]learly erroneous in view of the reliable, probative and substantial evidence on the whole record." NRS 233B.135(3)(e). Absent contrary stipulation, see NRS 233B.131(1), NRS 233B.135 requires the district court to consider the entire administrative record to determine whether the agency's decision is clearly erroneous, unless the parties stipulate to shorten the record. NRS 233B.131; NRS 233B.135.

Schulz contends that the district court erred in accepting the November 6, 2008 stipulation to extend the time for submitting the administrative record as a stipulation to judicial review on an abbreviated

record. Here, although Schulz contributed to the confusion by filing a combined petition/complaint and not clarifying that the November 6, 2008, stipulation only applied to the first motion to dismiss, neither the State nor the County respondents defend the November 6, 2008, stipulation as adequate to permit judicial review without submission of the complete record under NRS 233B.131(1). In its Order Denying Petition for Judicial Review and Granting Motions to Dismiss Complaint, the district court found that the SBOE's decision was supported by substantial evidence without the benefit of the whole record because the record had not been filed and there was no stipulation to shorten the record. Therefore, we reverse the Order to the extent it denies Schulz's petition for judicial review without benefit of the complete administrative record.[3]

Recognizing the problems with the November 6, 2008, stipulation as the basis for deciding a petition for judicial review without the underlying record, the State and County argue that Schulz had ample opportunity to bring the relevant portion of the record to the district court's attention but failed to do so and thus should not be heard on appeal as to the deficiencies in the record. This contention is without merit. First, the points and authorities filed with the district court in connection

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[3]On July 5, 2011, this court entered its order of affirmance in Schulz Partners, LLC v. Zephyr Cove Property Owners Association, Inc., Docket Nos. 55006 and 55557 (Order of Affirmance, July 5, 2011). The parties noted the pendency of these appeals in the briefs on this appeal, urging that their decision may affect or render moot some or all of the issues presented. We leave to the parties and the district court to address on remand the impact, if any, of this decision on Count III and the petition for judicial review.

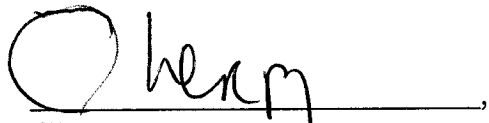
with the motions to dismiss did not focus on the merits of Schulz's petition for judicial review. Second, Schulz was not obligated to address the merits of its petition until "the agency gives written notice to the parties that the record of the proceeding under review has been filed." NRS 233B.133(1). Third, although Schulz and the parties stipulated to extending the time to file the administrative record indefinitely until the district court ruled on a motion to dismiss, that stipulation was entered prior to the County's motion to dismiss and the State's joinder in the County's motion. Therefore, Schulz could not have been on notice that the district court intended to rule on the merits of the petition for judicial review prior to the filing of the record or supporting points and authorities.

While we reverse and remand for further proceedings as to the petition for judicial review, we affirm the district court's dismissal of Counts I and II of the complaint for failure to join necessary and/or indispensable parties. As to Count III, it is unclear whether, as alleged in the petition/complaint, the taxes were paid under protest or whether, as asserted by affidavit not offered until the County filed its reply in support of its motion to dismiss, no protest was filed. As disposition of Count III may depend on the protest issue and/or disposition of the petition for judicial review, on which we express no opinion, we reverse and remand as to Count III.

For these reasons, we

ORDER the judgment of the district court AFFIRMED IN

PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[4]



_____, J.
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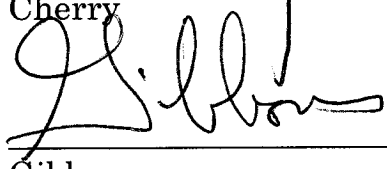

_____, J.
Gibbons

_____, J.
Pickering

cc: Hon. James Todd Russell, District Judge
Paul F. Hamilton, Settlement Judge
Harry W. Swainston
Attorney General/Carson City
Douglas County District Attorney/Minden
Carson City Clerk

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[4]We have considered and found the remainder of the parties' contentions to be either outside the record before the district court or without merit.