

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD CHUDACOFF, M.D., AN
INDIVIDUAL,
Appellant,

vs.

UNIVERSITY MEDICAL CENTER OF
SOUTHERN NEVADA, A POLITICAL
SUBDIVISION OF CLARK COUNTY,
STATE OF NEVADA; TOM COLLINS,
STEVE SISOLAK, LARRY BROWN,
LAWRENCE WEEKLY, CHRIS
GIUNCHIGLIANI, SUSAN BRAGER,
AND RORY REID, CLARK COUNTY
COMMISSIONERS, EX-OFFICIO, THE
BOARD OF TRUSTEES OF
UNIVERSITY MEDICAL CENTER OF
SOUTHERN NEVADA; AND THE
MEDICAL AND DENTAL STAFF OF
THE UNIVERSITY MEDICAL CENTER
OF SOUTHERN NEVADA, AN
INDEPENDENT SUBDIVISION OF
UNIVERSITY MEDICAL CENTER OF
SOUTHERN NEVADA,
Respondents.

No. 54880

FILED

MAR 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Snoop*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order that, among other things, dismissed a petition for judicial review in an employment action for lack of jurisdiction. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

The district court dismissed appellant Richard Chudacoff, M.D.'s petition for judicial review for lack of jurisdiction, determining that Nevada's Administrative Procedure Act, NRS Chapter 233B, did not apply to decisions by respondent University Medical Center of Southern Nevada

and the respondent Clark County Commissioners, when acting as the trustees of University Medical Center. This appeal followed.

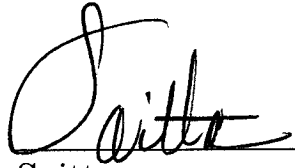
On appeal, Chudacoff argues that the district court erred in dismissing his petition for judicial review because, under NRS 233B.031, the University Medical Center is an agency for the purposes of NRS Chapter 233B. This argument is based on a misreading of NRS 233B.031 to imply that the phrase, “of the Executive Department of the State Government,” only modifies “employee.” Rather, NRS 233B.031’s use of “[e]xecutive” clearly modifies all the entities in the statute, and under this proper interpretation of NRS 233B.031, the University Medical Center is not an agency for the purposes of NRS Chapter 233B. See Leven v. Frey, 123 Nev. 399, 402, 168 P.3d 712, 714 (2007) (stating that this court reviews questions of statutory construction de novo).

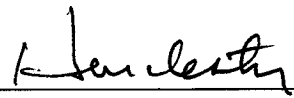
Chudacoff also argues that judicial estoppel should be applied to preclude respondents’ dismissal arguments because respondents asserted in a related proceeding in Nevada federal district court that Chudacoff could petition for judicial review pursuant to NRS Chapter 233B in state district court. We conclude that the conduct ascribed to respondents does not meet the standard for judicial estoppel, and therefore reject this argument. Marcuse v. Del Webb Communities, 123 Nev. 278, 287, 163 P.3d 462, 468-69 (2007) (explaining that the application of judicial estoppel is a question of law that this court reviews de novo and setting forth the test for when judicial estoppel applies).

Finally, Chudacoff argues that the district court should have, alternatively, treated the petition for judicial review as a petition for a writ of certiorari and reached the merits of the dispute and that respondents should be sanctioned because their district court motion to

dismiss, though granted, was frivolous. We reject these arguments as being without merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


Saitta _____, J.


Hardesty _____, J.


Parraguirre _____, J.

cc: Hon. Susan Johnson, District Judge
Ara H. Shirinian, Settlement Judge
Law Office of Jacob L. Hafter & Associates
Jimmerson Hansen
Mandelbaum, Ellerton & McBride
Eighth District Court Clerk

¹As we affirm the district court's order, we conclude that Chudacoff's request for sanctions against respondents for forcing him to file this appeal is not warranted.