IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRI A. PATRAW,
Appellant,
vs.
CARY GROTH, AN INDIVIDUAL; NEVADA SYSTEM OF HIGHER EDUCATION, A STATE ENTITY; AND MILTON GLICK, AN INDIVIDUAL,
Respondents.

No. 55433

ORDER OF AFFIRMANCE AND REMAND

This is an appeal from a district court order granting a preliminary injunction in an employment action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

After appellant Terri Patraw was terminated from her position as head coach of the University of Nevada, Reno women's soccer team, UNR president Milton Glick sent her a letter banning her from the UNR campus and UNR-sponsored events. Patraw filed two actions against respondents Cary Groth, UNR's athletic director, Nevada System of Higher Education (NSHE), and president Glick. Patraw initiated the first action before president Glick's ban and the second after the ban. The lawsuits, which were consolidated into a single action, included a claim for defamation and for a 42 U.S.C. § 1983 violation of First Amendment rights to free speech, petition, and association, that stemmed at least partially from president Glick's ban. The district court granted NSHE summary judgment in that lawsuit.

After Patraw appealed the summary judgment to this court, she began contacting president Glick and other NSHE representatives to demand that the ban be lifted against her and threatening to violate it if it

was not lifted by a specific date. NSHE filed a motion for a temporary restraining order and a preliminary injunction to prohibit Patraw from entering UNR's campus, attending UNR-sponsored events, and contacting specific people. The district court granted the temporary restraining order and the preliminary injunction.

At the preliminary injunction hearing, Patraw asserted that the district court did not have jurisdiction to enter the temporary restraining order or to enter a preliminary injunction while her appeal of the summary judgment was pending before this court. In granting the preliminary injunction, the district court ruled that it did have jurisdiction because the preliminary injunction was a collateral matter to the summary judgment appeal. Due to a clerical error, the preliminary injunction states that it "shall be in existence until a preliminary injunction is issued."

On appeal, Patraw argues that the district court did not have jurisdiction to enter the preliminary injunction while the summary judgment appeal was pending before this court and that the preliminary injunction is void and unenforceable on its face.[1] We conclude that the district court had jurisdiction to enter the preliminary injunction, as it was a collateral matter to the summary judgment appeal before us, and

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[1]Patraw also argued that NSHE was judicially estopped from moving for a preliminary injunction based on the same evidence relied on in the summary judgment. The doctrine of judicial estoppel prevents a party from asserting that a fact is untrue when that party has, under oath in former litigation, already conceded the truth of the fact. Sterling Builders, Inc. v. Fuhrman, 80 Nev. 543, 549, 396 P.2d 850, 854 (1964). Because NSHE has never made inconsistent factual assertions, the doctrine of judicial estoppel does not apply here.

that the preliminary injunction is enforceable. However, we recognize that the district court made a clerical mistake when approving the preliminary injunction's expiration language. Therefore, we affirm the order granting the preliminary injunction but remand this case so the district court can address the clerical mistake in the preliminary injunction's language. Because the parties are familiar with the facts and procedural history of this case, we do not recount them further except as necessary for our disposition.

The district court had jurisdiction to enter the preliminary injunction

Patraw contends that because the summary judgment appeal concerns president Glick's ban against Patraw, which prohibits her from entering the UNR campus, and the preliminary injunction also prohibits her from entering the UNR campus, the district court lacked jurisdiction to issue the injunction.[2] We disagree.

The preliminary injunction is a collateral matter to the summary judgment appeal. When an appeal is filed, the district court is divested of jurisdiction and can only enter orders on matters that are

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[2]Patraw presents argument on both the temporary restraining order and the preliminary injunction. However, a temporary restraining order is not appealable. See Lady Bryan M. Co. v. Lady Bryan M. Co., 4 Nev. 414, 416 (1868); see also Sugarman Co. v. Morse Bros., 50 Nev. 191, 255 P. 1010 (1927).

Patraw also argues that the district court erred by denying her motion to strike the temporary restraining order after she had informed the district court that it did not have jurisdiction to enter the temporary restraining order. A motion to strike a temporary restraining order is not an appealable issue. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990) (reasoning that "where no statutory authority to appeal is granted, no right to appeal exists").

purely collateral to the appeal, "i.e., matters that in no way affect the appeal's merits." Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006).

We recognize that two of Patraw's issues in the summary judgment appeal address president Glick's ban. While the preliminary injunction and president Glick's ban are similar, they are distinct because they are allowed under different authorities and enforced by different enforcement bodies. The summary judgment appeal is requesting damages stemming from president Glick's ban but not challenging the ban itself. The preliminary injunction concerns Patraw as a threat to UNR personnel and representatives. Whether she continues to be a threat to them is a collateral issue to the issues she raises in the summary judgment appeal. Even if the summary judgment appeal was challenging president Glick's ban, a district court does not lose the ability to issue injunctive relief just because a university has issued similar injunctive relief.

As NSHE was seeking collateral injunctive relief and not seeking to alter, vacate, or otherwise modify or change the summary judgment, the district court did not need to follow the Huneycutt procedure. Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978) (if a district court wishes to grant a motion on an issue that is on appeal, it must certify its inclination to grant the motion to this court, and then the moving party must request this court remand the issue so that the district court can address it), disapproved of on other grounds by Foster v. Dingwall, 126 Nev. ___, ___, 228 P.3d 453, 457 fn.4 (2010). The district court had jurisdiction to enter the preliminary injunction as it in no way

affects the summary judgment appeal's merits. See Mack-Manley, 122 Nev. at 855, 139 P.3d at 529-30.

The order for preliminary injunction is enforceable

Patraw contends that the preliminary injunction is void on its face and unenforceable because it is overbroad, vague, and ambiguous. We disagree, but we recognize that there is a clerical mistake in the preliminary injunction's expiration language.

NRCP 65(d) requires that an injunction "shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." We will not disturb a decision to grant or deny a preliminary injunction absent an abuse of discretion. S.O.C., Inc. v. The Mirage Casino-Hotel, 117 Nev. 403, 407, 23 P.3d 243, 246 (2001). Further, we will not disturb the district court's findings of fact unless they are not supported by substantial evidence, and thus are erroneous. Id. This is a question of law, and "[q]uestions of law are reviewed de novo." Id.

The order for preliminary injunction is valid, as the reasons for the injunction are readily apparent from the record. See Las Vegas Novelty v. Fernandez, 106 Nev. 113, 118, 787 P.2d 772, 775 (1990) (holding that "the lack of a statement of reasons does not necessarily invalidate a permanent injunction, so long as the reasons for the injunction are readily apparent elsewhere in the record and are sufficiently clear to permit meaningful appellate review," and applying this rule to preliminary injunctions as well). In addition, the order for preliminary injunction incorporates the findings of the order granting the motion for preliminary injunction, which goes into detail about the evidence presented at the hearing. The district court properly considered

evidence from as many as nine years ago in order to establish Patraw's past course of conduct. The scope of the order for preliminary injunction is also specific because it includes four succinct paragraphs listing what Patraw is enjoined from doing.

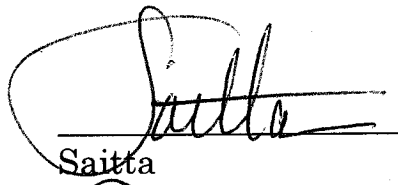
While the preliminary injunction's inclusion of the language "shall be in existence until a preliminary injunction is issued," does not render it void, the district court needs to address this harmless clerical error. We stated in Ormachea v. Ormachea, 67 Nev. 273, 292, 217 P.2d 355, 365 (1950):

> Judgments are to have a reasonable intendment. Where a judgment is susceptible of two interpretations, that one will be adopted which renders it the more reasonable, effective and conclusive, and which makes the judgment harmonize with the facts and law of the case, and be such as ought to have been rendered.

Thus, the preliminary injunction is not self-voiding. Interpreting it to have the most reasonable and effective construction means that the language "shall be in existence until a preliminary injunction is issued" does not annul the injunction. The preliminary injunction is not overbroad, vague, or ambiguous as both the record and the order granting the preliminary injunction clearly express the evidence supporting the granting of the preliminary injunction. Furthermore, the preliminary injunction itself describes what Patraw is enjoined from doing. We affirm the order granting the preliminary injunction, however, we remand the

preliminary injunction so that the district court can address the clerical error.[3]

It is so ORDERED.



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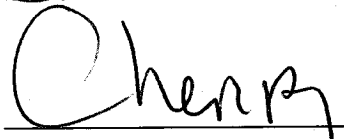

_____, J.
Cherry

_____, J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
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Robison Belaustegui Sharp & Low
Mary Dugan, University of Nevada, Reno
Washoe District Court Clerk

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[3]Although appellant has not been granted leave to proceed in proper person, see NRAP 46(b), we have considered the proper person documents received and conclude that the relief requested is not warranted.