IN THE SUPREME COURT OF THE STATE OF NEVADA

LESTER RAINE AND RHONDA K. RAINE,

Appellants,

vs.

STATE OF NEVADA, EX REL TRANSPORTATION SERVICES AUTHORITY, F/K/A PUBLIC SERVICE COMMISSION,

Respondent.

No. 36184

FILED
SEP 10 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature] DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondent's motion for summary judgment. The district court dismissed appellants' tort actions because appellants failed to exhaust administrative remedies available to them. We conclude that the district court correctly determined that the appellants were barred from seeking judicial review under the exhaustion of administrative remedies doctrine; therefore, we affirm the district court's order granting summary judgment in favor of the respondent.

Appellants Lester and Rhonda Raine filed suit against respondent Transportation Service Authority ("TSA"), claiming five causes of action: (1) misrepresentation; (2) negligence; (3) interference with prospective business advantage; (4) prima facie tort, and (5) deprivation of due process of law. The Raines' action stems from an application filed with the TSA under the corporate name of Aurora Towing, Inc., for a certificate of operation to provide tow car services. Because the Raines already owned and operated a tow car company operating as Roadrunner Towing and Recovery, Inc., the TSA commenced an investigation to determine whether

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granting the certificate to Aurora would violate the Nevada Administrative Code.[1]

As part of this investigation, a representative of the TSA contacted the Raines and inquired about their ownership interest in Aurora, as well as their ownership of Roadrunner. Instead of responding to the TSA's inquiries, the Raines withdrew the application and sold their interest in Aurora. The Raines then filed suit against the TSA, alleging that the TSA "forced Aurora to shut down and refused to allow Aurora to operate until Plaintiffs gave up all [interest in Aurora]."

In response to the Raines' complaint, the TSA filed a motion for summary judgment with the district court, arguing that the Raines were precluded from seeking judicial review because the Raines had failed to exhaust their administrative remedies.[2]

The district court granted the TSA's motion. The district court found that the Raines voluntarily withdrew the application and sold their interest in Aurora rather than answer the questions posed by the TSA. Because the Raines

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[1]NAC 706.386 generally prohibits ownership of two tow car services located in the same geographic area. This code provision reads:

> The transportation services authority will consider a transfer of operating rights to a person who is the holder of operating rights which duplicate, in part or in whole, those to be transferred, but will not allow a person to hold duplicate authority over the same routes, in the same territory or for the transportation of identical commodities unless the transportation services authority determines that such duplication is in the public interest.

[2]The TSA also argued that because the acts the Raines complained of were discretionary acts, the TSA was statutorily immune from suit pursuant to NRS 41.032. Because the district court did not address the TSA's argument regarding statutory immunity, and because discussion of that issue is unnecessary to resolve this appeal, we do not reach the issue here.

filed suit against the TSA in district court instead of pursuing administrative remedies available to them, the district court determined that the Raines had failed to exhaust their administrative remedies, and were thus precluded from seeking judicial review. The Raines now appeal this ruling.

The exhaustion of administrative remedies doctrine is well established in Nevada.[3] This rule requires that aggrieved parties exhaust their administrative remedies prior to seeking judicial relief.[4] This court has determined that judicial economy favors application of the doctrine, stating that "[t]he 'exhaustion doctrine' is sound judicial policy. If administrative remedies are pursued to their fullest, judicial intervention may become unnecessary."[5] The doctrine mandates that if aggrieved parties do not pursue remedies available at the administrative level, they are barred from seeking judicial relief.

In this case the aggrieved parties failed to exhaust their administrative remedies. The Raines simply withdrew their application after the TSA inquired about the joint ownership of the two tow car services. Subsequently, the Raines filed suit in district court claiming that they had suffered damages as a result of the TSA's actions. The TSA, however, did not reject the Raines' application; instead, the Raines voluntarily withdrew their application after determining on their own that their application would not be granted. They then filed suit in district court seeking judicial review.

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[3]First Am. Title Co. v. State of Nevada, 91 Nev. 804, 806, 543 P.2d 1344, 1345 (1975).

[4]Id.

[5]Id.

Furthermore, this court has previously determined that when a party receives what it deems is an adverse correspondence from an administrative agency, the exhaustion of administrative remedies doctrine requires that the party pursue its remedies with the administrative agency, not in district court.[6] This is precisely the opposite of what happened here.

Therefore, we conclude that the district court correctly determined that the exhaustion of administrative remedies doctrine barred the Raines from seeking judicial review. Although the Raines had administrative remedies available to them, they failed to pursue these avenues of relief, and, instead, simply withdrew their application prior to a final decision being made by the TSA and filed suit in district court. The exhaustion of administrative remedies doctrine prevents judicial review of the Raines' claims.[7]

The Raines also argue that even if the exhaustion of administrative remedies doctrine applies to them, they fit within an exception to the doctrine. This contention is without merit. Although exceptions to the exhaustion of administrative remedies doctrine are recognized in Nevada,[8] we

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[6]See Gray Lines Tours v. District Court, 99 Nev. 124, 126, 659 P.2d 304, 305 (1983).

[7]Additionally, we conclude that the Raines' argument that administrative remedies were somehow available to Aurora, but were not available to them, is without merit. The Raines filed and then withdrew their application. The Raines were the sole shareholders in Aurora and were two of the three directors. Any action taken on behalf of a corporate entity such as Aurora must be done through agents of the corporation, who, in this case, are the Raines. Thus, their argument that they are somehow separate from Aurora is without merit.

[8]These exceptions are set out in the following cases: State, Dep't of Taxation v. Scotsman Mfg., 109 Nev. 252, 254-55, 849 P.2d 317, 319 (1993) (recognizing that the exhaustion of administrative remedies doctrine does not apply to cases related solely to the interpretation or constitutionality of a statute, nor does the doctrine apply to cases where the initiations of administrative proceedings would be futile); Palmer v. State, 106 Nev. 151, 153, 787 P.2d 803, 804-05

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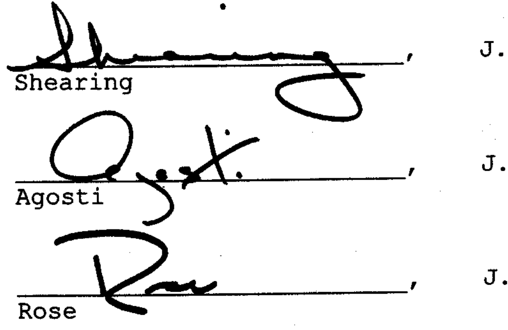
have expressed "reluctan[ce]" to circumvent the exhaustion of administrative remedies doctrine.[9] There has been no showing in this case that resort to administrative remedies would be futile, would result in the statute of limitations running or that this case related solely to the interpretation or constitutionality of a statute. Therefore, we conclude that the Raines' contention that they fit within an exception to the exhaustion of administrative remedies doctrine is without merit.

Accordingly, because the district court correctly determined that the Raines were precluded from seeking judicial review by the exhaustion of administrative remedies doctrine and granted summary judgment in favor of the TSA, we

ORDER the judgment of the district court AFFIRMED.



_______________, J.
Shearing

_______________, J.
Agosti

_______________, J.
Rose

cc: Hon. Jack B. Ames, District Judge
Attorney General
Wilson & Barrows
Elko County Clerk

. . . *continued*
(1990) (doctrine does not apply to cases where plaintiff must begin judicial proceedings or risk losing his or her claim because of the statute of limitations); Engelmann v. Westergard, 98 Nev. 348, 353, 647 P.2d 385, 388-89 (1982) (doctrine does not apply when resorting to administrative remedy would be futile); State of Nevada v. Glusman, 98 Nev. 412, 419-20, 651 P.2d 639, 643-44 (1982) (application of doctrine is discretionary when case relates solely to interpretation or constitutionality of a statute).

[9]Glusman, 98 Nev. at 419-20, 651 P.2d at 643-44.