

WITHDRAWN PER 6/1/16 ORDER FILED

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RENO DODGE SALES, INC., A
NEVADA CORPORATION; AND
DONALD E. WEIR,
Appellants,
vs.
THE STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES,
AN ADMISTRATIVE AGENCY OF THE
STATE OF NEVADA,
Respondent.

No. 67903

~~FILED~~
~~MAR 16 2016~~
~~TRACIE K. LINDEMAN~~
~~CLERK OF SUPREME COURT~~
~~BY [Signature]~~
~~DEPUTY CLERK~~

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting Respondent's Motion to Dismiss Appellant's Petition for Judicial Review. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

On or about March 25, 2014, the Department of Motor Vehicles served Reno Dodge with a Notice of Violation asserting three separate violations of NRS 482.554, which prohibits deceptive trade practices. Prior to the administrative hearing, Reno Dodge filed a Motion to Dismiss the violation, asserting the Department does not have jurisdiction to issue the violation under the section cited, NRS 482.554(2)(c). Reno Dodge filed a Petition for Judicial Review with the district court after the Administrative Law Judge denied its Motion to Dismiss the Notice of Violation. In its Petition, Reno Dodge again argued the Department does not have jurisdiction to proceed with the Notice of Violation in this matter. The Department filed a Motion to Dismiss the Petition for Judicial Review arguing the denial of the Motion to Dismiss below was not a final decision. Reno Dodge argued the Petition for Judicial Review was appropriate because, although not a final order, the

denial of its Motion to Dismiss was an appealable procedural order pursuant to NRS 233B.130(1) because review of the final decision would not provide Reno Dodge with an adequate remedy. The district court granted the Department's Motion to Dismiss, holding the Petition was not justiciable and Reno Dodge's arguments must be determined by the administrative agency first. The district court noted that it was not sure Reno Dodge demonstrated there was a jurisdictional question in this matter and, while jurisdiction was in dispute, it was not clear that there was a jurisdictional defect. This appeal followed.¹

We review a district court's dismissal of a petition for judicial review for lack of jurisdiction de novo. *Benson v. State Engineer*, 131 Nev. ___, ___, 358 P.3d 221, 224 (2015) (reh'g denied).² We also review a district court's decision regarding subject matter jurisdiction de novo. *Am. First Fed. Credit Union v. Soro*, 131 Nev. ___, ___, 359 P.3d 105, 106 (2015) (citing *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009)).

The question before us is whether the District Court erred in granting the Motion to Dismiss on the grounds that review of the final decision would provide Reno Dodge an adequate remedy. As noted, NRS 233B.130(1) allows a party to seek judicial review of a preliminary, procedural, or intermediate ruling by an administrative agency if "review

¹We do not recount the facts except as necessary to our disposition.

²See also *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (we review the district court's granting a motion to dismiss de novo); *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. ___, ___, 321 P.3d 912, 914 (2014) (same); *Zohar v. Zbiegien*, 130 Nev. ___, ___, 334 P.3d 402, 404 (2014) (same).

of the final decision of the agency would not provide an adequate remedy.” The Nevada Supreme Court has held that while normally one must first exhaust the administrative remedies available, that is not required if the agency clearly lacks jurisdiction. *Benson*, 131 Nev. at ___, 358 P.3d at 225. The Nevada Supreme Court has also explained that if initiation of the administrative proceedings would be futile, exhausting the administrative remedies is not required. *Id.* (citing *State, Nev. Dep’t of Taxation v. Scotsman Mfg. Co.*, 109 Nev. 252, 255, 849 P.2d 317, 319 (1993)). The court went on to note that “when the facts of a particular case prove that the agency is statutorily precluded from granting a party any relief at all, administrative proceedings are futile. *Id.* However, the court also stated, “we do not consider administrative proceedings to be futile solely because the statute prevents the petitioner from receiving his or her ideal remedy through administrative proceedings.” *Id.* at 226.

In this case, Reno Dodge alleges it does not have an adequate remedy if it is forced to proceed with the administrative hearing because the Department does not have jurisdiction and therefore the administrative proceedings would be futile. However, Reno Dodge asserts the Department does not have jurisdiction to issue the Notice of Violation under NRS 482.554(2)(c) because the alleged conduct did not arise out of a “consumer sales transaction.” This does not present a jurisdictional question.

“The jurisdiction of a court depends upon its right to decide a case, and never upon the merits of its decision.” *State v. Second Judicial Dist. Ct. of Nevada, in and for Washoe Cty.*, 48 Nev. 198, 228 P. 617, 618 (1924) (citing *Holbrook v. James H. Prichard Motor Co.*, 27 Ga. App. 480, 109 S.E. 164 (1921)); see also *Luc v. Oceanic S. S. Co.*, 84 Nev. 576, 445

P.2d 870 (1968) (stating whether the court erred in striking a complaint goes to the merits of the case and not to the court's jurisdiction to act). Subject matter jurisdiction is the court's authority to hear a particular type of case; this is different from the issue of whether the essential elements of a claim are satisfied. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (internal quotations and citations omitted).

Instructively, the United States Supreme Court has stated, "On the subject-matter jurisdiction/ingredient-of-claim-for-relief dichotomy, this Court and others have been less than meticulous. Subject matter jurisdiction . . . is sometimes erroneously conflated with a plaintiff's need and ability to prove the defendant bound by the federal law asserted as the predicate for relief—a merits-related determination. Judicial opinions . . . often obscure the issue by stating that the court is dismissing 'for lack of jurisdiction' when some threshold fact has not been established, without explicitly considering whether the dismissal should be for lack of subject matter jurisdiction or for failure to state a claim." *Id.* at 511 (internal quotations and citations omitted).

Whether Reno Dodge's commercial violated NRS 482.554(2)(c) goes to the elements of the claim, not to the Department's jurisdiction to issue notices of violations and impose fines. In essence, Reno Dodge is arguing that the allegations are not true, not that the allegations are being heard in the wrong forum. Its argument goes to the merits of the allegations, not to whether the Department has the power to determine the merits.

NRS 482.554(1) gives the Department authority to issue the subject fine; it states, in pertinent part, "The Department may impose an administrative fine . . . against any person who engages in a deceptive

trade practice.” Thus, pursuant to NRS 482.554, the Department has jurisdiction to issue fines against any person who engages in a deceptive trade practice, as defined by that statute. The Department’s jurisdictional authority to issue fines for deceptive trade practices involving motor vehicles is unrelated to whether, in this case, Reno Dodge’s conduct constituted a deceptive trade practice as defined by NRS 482.554. Therefore, Reno Dodge’s argument – that it does not have an adequate remedy because the Department lacks jurisdiction – is erroneous because the Department has the power and authority to issue fines like the one here. Consequently, this does not present a jurisdictional issue and Reno Dodge has an adequate remedy.

Even if Reno Dodge was correct and this matter presented a jurisdictional question, which it does not, the underlying jurisdictional question is irrelevant because Reno Dodge still has an adequate remedy pursuant to Nevada law.

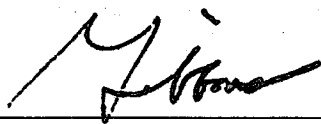
The right to petition for judicial review of an administrative decision constitutes an adequate remedy. *Howell v. Ricci*, 124 Nev. 1222, 1229, 197 P.3d 1044, 1049 (2008) (citing *Kay v. Nunez*, 122 Nev. 1100, 1104-05, 146 P.3d 801, 805 (2006)). Further, the right to appeal is generally considered an adequate remedy. *Pan v. Eight Judicial Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). As noted above, administrative proceedings are not futile solely because the party is likely to lose, or might not receive its ideal remedy. *Benson*, 131 Nev. at ___, 358 P.3d at 226. Moreover, a remedy does not fail to be adequate just because pursuing it through the ordinary course of law is more time consuming. *See Cty. of Washoe v. City of Reno*, 77 Nev. 152, 156, 360 P.2d 602, 603 (1961) (citing *Hubbard v. Justice’s Court*, 5 Cal.App. 90 (1907)).


Additionally, NRS 233B.135(3)(b) states the district court may remand, affirm, or set aside the final agency decision if the decision is in excess of the statutory authority of the agency.


Assuming *arguendo* that the administrative law judge finds the Department's fine in this case is appropriate and Reno Dodge is then an aggrieved party (pursuant to NRS 233B.130(1)), Reno Dodge has an adequate remedy by petitioning for judicial review from the final decision, and then appealing the petition for judicial review should it be denied. This court cannot say the administrative proceedings in this case are futile simply because exhausting the administrative process is not Reno Dodge's ideal remedy or because the administrative process will take more time.

We therefore,

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Patrick Flanagan, District Judge
Guild, Gallagher & Fuller, Ltd.
Attorney General/Carson City
Washoe District Court Clerk