

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE LEE ENGEL AND
NOBUKO ENGEL,
Appellants,
vs.
COUNTY OF CLARK,
Respondent.

No. 36524

FILED

MAY 15 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from a district court order that denied a petition for a writ of mandamus. In the petition, appellants Lawrence and Nobuko Engel, sought to compel the Clark County Board of Commissioners (CCBC) to halt abatement of nuisances at a site owned by them. The Engels claim to live underground at the site in the basement/foundation of an uncompleted building that has been covered by a roof.

While the Engels' original petition for writ of mandamus was pending in the district court, the CCBC held a continuation hearing on the Engels' appeal of administrative proceedings. Although they were provided adequate notice, the Engels failed to appear, and the CCBC upheld the decision of the hearing officer and ordered abatement to be conducted immediately after resolution of the writ petition in district court. The district court denied the petition for writ of mandamus, noting that the Engels had failed to exhaust their administrative remedies and that the actions of the CCBC were supported by substantial evidence and were neither arbitrary nor capricious. The Engels, in proper person, appeal the district court's order denying their writ petition.

The exhaustion of administrative remedies doctrine is well established in Nevada.¹ This rule requires that aggrieved parties exhaust their administrative remedies prior to seeking judicial relief.² This court has determined that judicial economy favors application of the doctrine, stating, “[t]he ‘exhaustion doctrine’ is sound judicial policy. If administrative remedies are pursued to their fullest, judicial intervention may become unnecessary.”³ Accordingly, if aggrieved parties do not pursue remedies available at the administrative level, they are barred from seeking judicial relief.

Clark County contends that by failing to appear at the continuation of their appeal to the CCBC, the Engels failed to exhaust their administrative remedies. In support of its argument that failure to appear constitutes failure to exhaust administrative remedies, Clark County relies on Marquart v. Director of Revenue, State of Missouri,⁴ where an appellate court discussed the policy behind dismissal for failure to exhaust administrative remedies when the complaining party initiates, but fails to participate in an administrative hearing.⁵

¹First Am. Title v. State of Nevada, 91 Nev. 804, 806, 543 P.2d 1344, 1345 (citing State v. Sadler, 21 Nev. 13, 23 P. 799 (1890)).

²Id.

³Id.

⁴896 S.W.2d 716 (Mo. Ct. App. 1995).

⁵Id. at 717-18; see also Oswald v. Graves, 819 F. Supp 680 (E.D. Mich. 1993) (inmate failed to exhaust administrative remedies by failing to appear at requested grievance interview); Doody v. State, Dept. of Soc. Servs., 993 S.W.2d 563 (Mo. Ct. App. 1999) (father seeking modification of
continued on next page . . .

“Exhaustion is generally required as a means to prevent premature interference with agency process, to afford the parties and the courts the benefit of the agency’s experience and expertise, and to allow the agency an opportunity to correct its own errors.”⁶ “As a practical matter of judicial economy, the complaining party may be successful at the administrative level; if so, the courts may never have to intervene.”⁷ “Further, permitting ‘frequent and deliberate flouting of administrative processes could weaken the effectiveness of an agency by encouraging people to ignore its procedures.’”⁸

“The exhaustion doctrine ‘does not require merely the initiation of prescribed administrative procedures. It is one of exhausting them, that is, of pursuing them to their appropriate conclusion and, correlatively, of awaiting their final outcome before seeking judicial intervention.’”⁹ “Courts in other jurisdictions have ruled that the mere invocation of an administrative appeal, followed by an unexcused failure

... continued

child support failed to exhaust administrative remedies by failing to appear at a requested administrative hearing).

⁶*Id.* (citing Bd. of Reg. For Healing Arts v. Hartenbach, 768 S.W.2d 657, 659 (Mo. Ct. App. 1989)).

⁷*Id.* at 718 (citing McKart v. United States, 395 U.S. 185, 195 (1969)).

⁸*Id.* (quoting McKart, 395 U.S. at 195).

⁹*Id.* (quoting Aircraft & D. Equipment Corp. v. Hirsch, 331 U.S. 752, 767 (1947)).

to appear at the hearing, 'amounts to a failure to exhaust administrative remedies and is fatal to that party's judicial appeal.'"¹⁰

A party does not exhaust his administrative remedies simply by stepping through the motions of the administrative process without affording the agency an opportunity to rule on the substance of the dispute. Exhaustion of administrative remedies is not accomplished through the expedience of default.¹¹

We find the Missouri court's reasoning persuasive and conclude that the Engels failed to exhaust their administrative remedies by failing to appear at the CCBC's continuation hearing regarding their abatement proceedings.

Further, where exhaustion bars judicial review because the complaining party initiated but failed to participate in the administrative appeal, there should be no remand:

Where . . . the party seeking judicial review has foreclosed through his own inaction completion of the administrative process, remand is inappropriate. An appeal that has died within the agency cannot be resurrected by appealing outside of it. In such a case, the doctrine [of exhaustion] serves as a bar to further relief.¹²

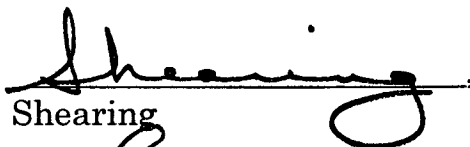
¹⁰Id. (quoting Mullenaux v. State, Or. Dept. of Revenue, 651 P.2d 724, 727 n.2 (Or. 1982)).

¹¹Mullenaux, 651 P.2d at 727; see also Olinger v. Partridge, 196 F.2d 986, 987 (9th Cir. 1952); Curtis v. Schaffer, 137 F. Supp. 683, 684 (S.D.N.Y. 1955); City of Los Angeles v. California Towel & Linen Supply Co., 31 Cal. Rptr. 832, 838-40 (Ct. App. 1963).

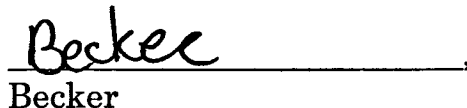
¹²Mullenaux, 651 P.2d at 727.

The record belies any claim by the Engels that appearance at the hearing would have been futile. The Engels were granted a continuation by the CCBC while awaiting a determination by the health district regarding their sewage system. Further, the Engels were originally granted a ninety-day abatement period when Clark County Code 11.06.050(d) only requires that at least five days be allotted for abatement. Thus, the record indicates that the Engels have been granted leniency and extensions exceeding those required by the Clark County Code. Accordingly, we

ORDER the district court's judgment AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Michael A. Cherry, District Judge
Lawrence Lee Engel
Nobuko Engel
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger/Civil Division
Clark County Clerk