IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIAN ORR, D.O., Appellant, vs. NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE, Respondent.	No. 73073-COA
MARIAN ORR, D.O., Appellant, vs. NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE, Respondent.	No. 73364-COA

ORDER OF AFFIRMANCE

Marian Orr, D.O., appeals from district court orders dismissing a petition for judicial review and awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

In 2012, Respondent Nevada State Board of Osteopathic Medicine (the Board) fined Orr in connection with a licensing matter.[1] Orr timely filed a petition for judicial review of the Board's decision and simultaneously sued the Board in federal court under 42 U.S.C. § 1983. Orr later dismissed the state-court petition, stating in her notice of voluntary dismissal that she was doing so in reliance on a position the Board took in the federal case that led her to believe that the district court no longer had jurisdiction to consider the petition. Orr further stated in

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

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the notice that she reserved the right to refile the petition should the Board change its position.

Orr ultimately lost in federal court in 2016, and she filed a second petition for judicial review with the state district court months later in early 2017. In the petition, Orr alleged that the Board "flopped its position" in the federal case after she dismissed the first petition, which led to the federal court's "appl[ying] qualified immunity to avoid addressing whether Dr. Orr's due process rights were violated." The Board moved to dismiss the petition on grounds that Orr failed to timely file it under the Nevada Administrative Procedure Act (APA) and that the district court thus lacked jurisdiction to consider it. The district court agreed and dismissed the action for lack of subject matter jurisdiction. The Board then moved for attorney fees and costs under NRS 622.410, which the district court granted.

On appeal, Orr argues that the district court erred in dismissing her petition for lack of subject matter jurisdiction and awarding the Board attorney fees and costs.

We first consider whether the district court properly dismissed Orr's petition for lack of subject matter jurisdiction. Orr argues that she had timely filed her earlier petition and reserved the right to file it again in the notice of voluntary dismissal. She further argues that she should have been allowed to file the petition on equitable grounds in light of the Board's alleged change of position. We disagree.[2]

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[2]We note that Orr failed to support any of her arguments on appeal with relevant authority, and thus we need not consider them. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288

This court reviews a district court's determination concerning subject matter jurisdiction de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). Generally, courts do not have jurisdiction to review official decisions of administrative agencies unless there is a statute allowing it. *Washoe Cty. v. Otto*, 128 Nev. 424, 431, 282 P.3d 719, 724 (2012). District courts have jurisdiction to review administrative decisions under the APA, but only when they "fall[ ] within the APA's terms and [are] challenged according to the APA's procedures." *Id.* at 431, 282 P.3d at 725. To invoke the district court's jurisdiction, parties seeking judicial review of an administrative decision must strictly comply with all statutory requirements for such review, and thus, noncompliance is grounds for dismissal. *Id.* Under NRS 233B.130, petitions for judicial review must "[b]e instituted by filing a petition in the district court" and "[b]e filed within 30 days after service of the final decision from the agency." NRS 233B.130(2)(b), (d). District courts lack jurisdiction to consider petitions that do not comply with the requirements of NRS 233B.130(2). *Otto*, 128 Nev. at 432-33, 282 P.3d at 725 ("[T]he filing requirements [of NRS 233B.130(2)] are mandatory and jurisdictional." (internal quotation marks and alterations omitted)).

Here, Orr filed the underlying petition over four years after the 30-day deadline had passed. Her voluntary dismissal of the earlier petition stripped the district court of jurisdiction over the matter. *See Jeep Corp. v. Second Judicial Dist. Court*, 98 Nev. 440, 444, 652 P.2d 1183, 1186 (1982) (concluding that an action that is voluntarily dismissed under NRCP

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n.38 (2006). However, because we conclude that they fail on their merits, we proceed to explain why.

41(a)(1)(i) "is terminated and the court is without further jurisdiction in the matter"). Thus, when filing the underlying petition, Orr was required to strictly comply with NRS 233B.130(2) to invoke the district court's jurisdiction, which she did not do. Consequently, the district court properly dismissed Orr's second petition for lack of subject matter jurisdiction.[3]

Next, we consider whether the district court properly awarded attorney fees and costs to the Board under NRS 622.410. Orr argues that the Board was not a prevailing party as required to obtain attorney fees and costs under the statute because the district court dismissed the matter for lack of subject matter jurisdiction. Orr further argues that if the district court lacked jurisdiction to consider the merits of her petition, it also lacked jurisdiction to award attorney fees and costs. Again, we disagree.

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[3]Orr's appeal to equity in arguing that she should have been allowed to file the second petition in light of the Board's supposed change of position resembles an equitable tolling analysis. *See Seino v. Emp'rs Ins. Co. of Nev.*, 121 Nev. 146, 152, 111 P.3d 1107, 1112 (2005) ("[I]n situations where the danger of prejudice to the defendant is absent, and the interests of justice so require, equitable tolling of the limitations period may be appropriate." (internal quotation marks and alterations omitted)). However, because the 30-day time limit to file a petition under NRS 233B.130(2)(d) is mandatory and jurisdictional, the doctrine of equitable tolling does not apply in this case. *See id.* at 153, 111 P.3d at 1112 (concluding that the doctrine of equitable tolling did not apply to a filing deadline in a workers' compensation statute and noting that "this court . . . has never applied the doctrine of equitable tolling to statutory periods that are mandatory and jurisdictional"). Even if it did, Orr makes no effort to justify how long she waited to file her second petition after losing the federal case. *See Orr v. Nev. State Bd. of Osteopathic Med.*, 668 F. App'x 242, 243 (9th Cir. 2016) (affirming the district court's dismissal of Orr's § 1983 claim on August 11, 2016, over five months before she filed the underlying petition).

This court reviews a district court's award of attorney fees and costs for an abuse of discretion. *Parodi v. Budetti*, 115 Nev. 236, 240, 984 P.2d 172, 174 (1999). However, when interpreting a statute to determine whether a party is eligible for such an award under the statute's language, this court reviews the award de novo. *In re Estate of Miller*, 125 Nev. 550, 553, 216 P.3d 239, 241 (2009). This court looks first to a statute's plain language, and if it is unambiguous, that is where the analysis ends. *Pawlik v. Deng*, 134 Nev. ___, ___, 412 P.3d 68, 71 (2018). Under NRS 622.410(1)-(2), the district court shall award a regulatory body reasonable attorney fees and costs if "the regulatory body is the prevailing party" in an "action relate[d] to the imposition or recovery of an administrative or civil remedy or penalty . . . or any order of the regulatory body." "The term 'prevailing party' is a broad one, encompassing plaintiffs, counterclaimants and defendants." *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 284, 890 P.2d 769, 773 (1995). A party prevails "if it succeeds on any significant issue in litigation which achieves some of the benefit it sought." *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (internal quotation marks omitted) (defining "prevailing party" under NRS 18.010).

Here, Orr essentially contends that the Board must have prevailed on the merits for the district court to properly award fees and costs under NRS 622.410. However, nothing in the plain text of the statute compels that result; it merely requires that the regulatory body prevail in a certain type of action, and the word "prevailing" does not itself imply an adjudication on the merits. *See CRST Van Expedited, Inc. v. EEOC*, 578 U.S. ___, ___, 136 S. Ct. 1642, 1651 (2016) (reasoning that "[c]ommon sense undermines the notion that a defendant cannot 'prevail' [under a fee-shifting statute] unless the relevant disposition is on the merits" and

concluding that "[t]he defendant may prevail even if the court's final judgment rejects the plaintiff's claim for a nonmerits reason"); *Amphastar Pharm. Inc. v. Aventis Pharma SA*, 856 F.3d 696, 710 (9th Cir. 2017) ("[W]e conclude that the Supreme Court [in *CRST*] has effectively overruled [a Ninth Circuit case]'s holding that when a defendant wins because the action is dismissed for lack of subject matter jurisdiction he is never a prevailing party."). Because the Board succeeded on a significant issue in the litigation (lack of jurisdiction) and thereby achieved the benefit it sought (dismissal), it was a "prevailing party" in accordance with the language of NRS 622.410(2). Moreover, Orr's petition clearly related to the enforcement of an order of a regulatory body. Accordingly, the district court properly concluded that the requirements for awarding fees and costs under NRS 622.410 were satisfied.

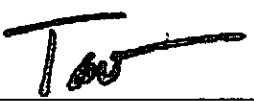
With respect to Orr's argument that the district court lacked jurisdiction to award fees and costs, we again note that nothing in the plain text of NRS 622.410 indicates that district courts lack power to award fees and costs to a regulatory body when it prevails for a nonmerits reason. Moreover, the Nevada Supreme Court has held that, even after a court is divested of jurisdiction to adjudicate the merits of a case, it retains jurisdiction to consider collateral matters like whether to award attorney fees and costs. *See Emerson v. Eighth Judicial Dist. Court*, 127 Nev. 672, 677-79, 263 P.3d 224, 227-29 (2011); *Kantor v. Kantor*, 116 Nev. 886, 895, 8 P.3d 825, 830 (2000); *see also Amphastar*, 856 F.3d at 709-11 (concluding that a fee-shifting statute within the federal False Claims Act constituted an independent grant of subject matter jurisdiction to award fees and costs to a prevailing party following dismissal of the underlying case for lack of

subject matter jurisdiction). Consequently, Orr's argument is without merit.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Joseph Hardy, Jr., District Judge
Ara H. Shirinian, Settlement Judge
Brandon L. Phillips, Attorney At Law, PLLC
Louis A. Ling
Eighth District Court Clerk