IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEROME BANNISTER,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE RICHARD SCOTTI, DISTRICT JUDGE,
Respondents,
and
SOUTHERN NEVADA REGIONAL HOUSING AUTHORITY, D/B/A SHERMAN GARDENS,
Real Party in Interest.

No. 76773-COA

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying an appeal from a justice court order of summary eviction. Real party in interest Southern Nevada Regional Housing Authority, d/b/a Sherman Gardens (SNRHA) filed an answer, as directed, and petitioner Jerome Bannister subsequently filed a reply.

Bannister faces eviction for allegedly failing to show that he repaid several hours of allegedly overdue community service. Bannister asserts that he was exempted from the community service requirement as a person receiving state assistance, which would serve as a legal defense to eviction. SNRHA disagrees.

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see also Humphries v.*

Eighth Judicial Dist. Court, 129 Nev. 788, 791, 312 P.3d 484, 486 (2013). Where there is no plain, speedy, and adequate remedy in the ordinary course of law, extraordinary relief may be available. NRS 34.170; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); *see also Oxbow Constr., LLC v. Eighth Judicial Dist. Court*, 130 Nev. 867, 872, 335 P.3d 1234, 1238 (2014). Whether a writ of mandamus will be considered is within this court's sole discretion. *Smith*, 107 Nev. at 677, 818 P.2d at 851; *see also Libby v. Eighth Judicial Dist. Court*, 130 Nev. 359, 363, 325 P.3d 1276, 1278 (2014); *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (noting the court can consider a petition for a writ of mandamus when important public interests are involved or when unsettled legal issues are presented).

We do not generally entertain writ petitions that request "review of a decision of the district court acting in its appellate capacity; however, where the district court has improperly refused to exercise its jurisdiction, has exceeded its jurisdiction, or has exercised its discretion in an arbitrary or capricious manner," we make exception to our general rule. *Southworth v. Eighth Judicial Dist. Court*, 134 Nev. ___, ___, 414 P.3d 311, 313 (2018). "An arbitrary or capricious exercise of discretion is one 'founded on prejudice or preference rather than on reason,' or 'contrary to the evidence or established rules of law." *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (citing *Black's Law Dictionary* 119 (defining "arbitrary"), 239 (defining "capricious") (9th ed. 2009)). Petitioner alleges that the district court exercised its discretion in an arbitrary or capricious manner, and, accordingly, the matter is properly before us and a writ petition is the appropriate vehicle for seeking relief.

Turning to the merits of the petition, we determine that the district court's conclusion that Bannister did not present a legal defense to eviction in asserting he was exempt from the community service requirement as a recipient of benefits under the Supplemental Nutrition Assistance Program (SNAP) was contrary to established rules of law. Notably, 24 C.F.R. 960.601(b)(5), as referenced in Bannister's lease, exempts Bannister from the service hours requirement if he receives assistance under a welfare program of the state in which his public housing agency is located. And in 2015, a notice from United States Department of Housing and Urban Development (HUD) clarified that SNAP qualifies as a welfare program of the state. *See* U.S. Dep't of Hous. & Urban Dev. Notice PIH-2015-12 (HA). "Therefore if a tenant is a member of a family receiving assistance under SNAP, and has been found by the administering State to be in compliance with the program requirements, that tenant is exempt from [the service hours requirement]." *See id.* at p.4, n.1.

SNRHA, claims that the quoted statement above added to HUD's prior explanation of the requirements under 24 C.F.R. 960.601 and therefore changes the exemption from the requirements altogether. On this basis, SNRHA asserts that the HUD notice was not applicable to excuse Bannister from the community service requirement prior to 2015. We disagree.

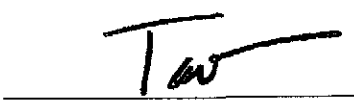
The requirements under 24 C.F.R. 960.601 did not change with the PIH-2015-12 Notice. Instead, the Notice was the agency's own interpretative guidance regarding the regulation to ensure the regulation's proper application. *See Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994) (noting that an agency's interpretation of its own regulations is due controlling weight unless plainly erroneous or inconsistent with the

regulation). In essence, the Notice clarified how the regulation was always supposed to work with regard to SNAP benefits, following an agency examination of the application of the community service requirements. *See* U.S. Dep't of Hous. & Urban Dev. Notice PIH-2015-12 (HA), at p.1 (stating the purpose of the notice is "to assist public housing authorities' (PHAs) understanding and administration of the Community Service and Self-Sufficiency Requirement (CSSR) and in response to an audit report issued by the Office of Inspector General"). Looking at this regulatory interpretation and applying it to the issue before us here, Bannister's SNAP benefits, received from 2009 onward, were always an exemption from the community service requirement of his lease with SNRHA. *See Soro v. Eighth Judicial Dist. Court*, 133 Nev. ___, ___, 411 P.3d 358, 361 (Ct. App. 2017) (noting a de novo standard of review for questions of law in the context of a writ petition).

Because Bannister was exempt from the community service requirement and the district court's order does not explain why it did not consider Bannister's exemption status, we determine that the district court's decision denying the appeal is contrary to the law and, therefore, the district court acted arbitrarily or capriciously by disregarding the established laws regarding the exemptions from the community service requirement. *See Armstrong*, 127 Nev. at 931-32, 267 P.3d at 780; *see also Nevada Gaming Comm'n v. Consol. Casinos Corp., Tahoe Div.*, 94 Nev. 139, 141, 575 P.2d 1337, 1338 (1978) (finding an administrative body's order arbitrary and capricious for failing to follow regulatory mandates). As such, the record here indicates that Bannister presented a valid legal defense to the summary eviction upon appeal. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to grant Bannister's appeal, recognizing Bannister's legal defense, and proceed pursuant to NRS 40.253.[1]

_____, A.C.J.
Douglas



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Richard Scotti, District Judge
Nevada Legal Services/Las Vegas
Parker, Nelson & Associates
Eighth District Court Clerk

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[1]NRS 40.253 states that where the court determines there is a legal defense to an alleged unlawful detainer, "the court shall refuse to grant either party any relief, and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to NRS 40.290 to 40.420, inclusive."

In light of our resolution of this matter, we vacate our order staying the district court's order denying the appeal entered on September 28, 2018.