IN THE SUPREME COURT OF THE STATE OF NEVADA

NILES PLEMON AND DENISE HOLMES,
Appellants,
vs.
NYE COUNTY CLERK, SANDRA L. MERLINO; AND NYE COUNTY COMMISSIONERS,
Respondents.

No. 37213

FILED

SEP 05 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellants' petition for a writ of mandamus and a district court order dismissing appellants' petition for judicial review concerning an initiative petition.

Initially, the procedural posture of this matter is unusual because both the petition for a writ of mandamus and the petition for judicial review, as well as the orders resolving the petitions, were filed in the same district court case. We conclude that the district court's order denying appellants' mandamus petition was the final judgment in the case, as it adjudicated the rights and liabilities of the parties who filed the mandamus petition and left nothing for future consideration by the district court.[1]

Further, once that final judgment was entered, the district court lacked jurisdiction to consider the petition for judicial review. In Greene v. District Court,[2] we held that a district court lacks jurisdiction to

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[1]See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

[2]115 Nev. 391, 990 P.2d 184 (1999).

allow amendment of a complaint after the final judgment has been entered, unless the judgment is vacated or set aside under the Nevada Rules of Civil Procedure.[3] We noted that having multiple final judgments within a single action is inconsistent with the normal meaning of "final judgment," and would have serious repercussions for appellate jurisdiction.[4] Here, appellants did not file, nor did the district court grant, any motion to vacate or set aside the order denying the mandamus petition. Thus, the district court lacked jurisdiction to consider and resolve appellants' petition for judicial review filed in the same case. Consequently, we need not decide whether the district court properly dismissed the petition for judicial review.

Concerning the order denying appellants' mandamus petition, appellants' notice of appeal as to that order was timely because notice of the order's entry was not served.[5] Thus, we have jurisdiction to consider the appeal from that order.

The district court denied the petition for a writ of mandamus on the basis that appellants had an adequate legal remedy in the form of a petition for judicial review under NRS 295.105. We conclude that the procedure for judicial review provided under NRS 295.105 was inapplicable. NRS 295.105 provides that if the county clerk certifies a petition as insufficient, the committee of voters may request that the

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[3]Id. at 396, 990 P.2d at 187.

[4]Id. at 395, 990 P.2d at 186.

[5]See NRAP 4(a)(1) (providing that a notice of appeal must be filed no later than thirty days after written notice of the judgment's entry is served).

board review the petition.[6] A board's final determination as to a petition's sufficiency is subject to court review.[7] Here, the Nye County Clerk determined that the initiative petition was procedurally sufficient. The Nye County Board of Commissioners refused to place the petition on the ballot not because it was procedurally insufficient, but rather because of the Board's view that the initiative was unconstitutional.

A petition for a writ of mandamus, on the other hand, was an appropriate vehicle for challenging the Board's actions.[8] A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station.[9] Once the Clerk certified the initiative petition as procedurally sufficient, the Board had a mandatory duty under NRS 295.115 to either enact the proposed ordinance or submit it to the county voters. But the Board voted not to place the initiative petition on the ballot. Thus, the mandamus petition was the proper method to challenge the Board's actions.

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[6]NRS 295.105(4). This provision was amended in 2001, and is now numbered as NRS 295.105(3). See 2001 Nev. Stat., ch. 581, § 47, at 2965.

[7]NRS 295.105(5). This provision was amended in 2001 to replaced "court" review with "judicial" review, and is now numbered as NRS 295.105(4). See 2001 Nev. Stat., ch. 581, § 47, at 2966.

[8]See Glover v. Concerned Citizens for Fuji Park, 118 Nev. __, 50 P.3d 546 (2002) (involving a mandamus petition filed in the district court that challenged the city clerk's refusal to place an initiative petition on the ballot).

[9]NRS 34.160.

Nevertheless, this court will affirm the district court's order if it reached the right result even for different reasons.[10] We conclude that the district court reached the right result in denying the mandamus petition because the initiative failed to contain an enacting clause. The initiative was therefore properly excluded from the ballot.

Article 19, Section 3 of the Nevada Constitution requires inclusion of an enacting clause: "The enacting clause of all statutes or amendments[11] proposed by initiative petition shall be: 'The People of the State of Nevada do enact as follows:'" Article 19, Section 4 of the Nevada Constitution reserves the initiative powers in Article 19 to "the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind in or for such county or municipality." We conclude that because Section 4 extends the power of initiative to counties and municipalities, then the limitations on that power should extend as well. Therefore, Section 4 extends the initiative enacting clause requirement to local legislation, such as the initiative at issue in this case.

Further, pre-election intervention is warranted to prevent an initiative's placement on the ballot when the initiative omits a constitutionally required enacting clause. In Caine v. Robbins,[12] this court intervened pre-election to affirm an injunction preventing submission of a statewide initiative measure at a county election because the initiative

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[10]See Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987).

[11]"Amendments" refers to amendments to statutes or the Nevada Constitution. See Nev. Const. art. 19, § 2(1) (providing that the initiative power applies to statutes, amendments to statutes, and amendments to the Nevada Constitution).

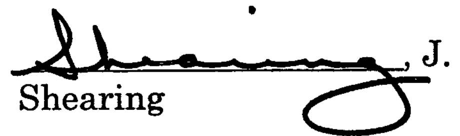
[12]61 Nev. 416, 131 P.2d 516 (1942).

lacked an enacting clause, and therefore plainly and palpably violated the constitution.

Based on the foregoing, we conclude that Board properly excluded the initiative from the ballot. Thus, the district court properly denied appellants' petition for a writ of mandamus compelling the Board to place the initiative on the ballot. Accordingly, we affirm the district court's order denying the mandamus petition.[13]

It is so ORDERED.[14]

, J.
Young


, J.
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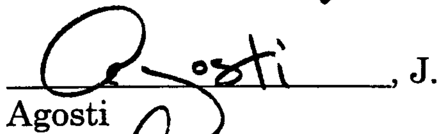
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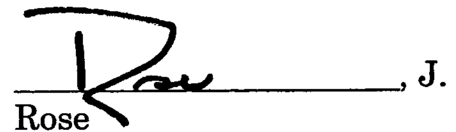
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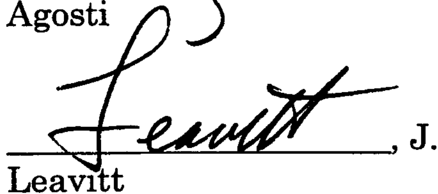
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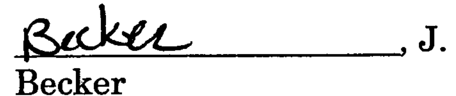
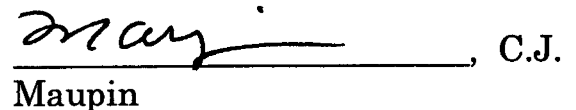

, J.
Becker

MAUPIN, C.J., dissenting:

I would remand this matter for the district court to consider the writ petition on the merits.


, C.J.
Maupin

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[13]We have not considered and express no opinion concerning whether other infirmities with the initiative exist.

[14]Although appellants were not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from them.

cc: Hon. John P. Davis, District Judge
Nye County District Attorney/Tonopah
Denise Holmes
Niles Plemon
Nye County Clerk