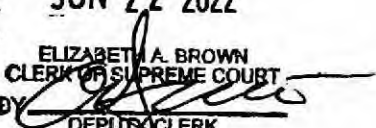


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

COMPLETE CARE CONSULTING,
LLC,
Appellant,
vs.
SHANNON M. CHAMBERS, IN HER
CAPACITY AS THE LABOR
COMMISSIONER OF THE STATE OF
NEVADA; AND THE STATE OF
NEVADA, OFFICE OF THE LABOR
COMMISSIONER,
Respondents.

No. 82883-COA

FILED
JUN 22 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Complete Care Consulting, LLC (CCC), appeals from a district court order dismissing a petition for judicial review and remanding for an administrative hearing. Second Judicial District Court, Washoe County; Lynne K. Simons, Chief Judge.

This case involves an informal complaint alleging unpaid overtime wages owed by CCC, which was filed with the Office of the Labor Commissioner and Shannon M. Chambers, in her capacity as Labor Commissioner (collectively, the Labor Commissioner). On September 17, 2020, after auditing CCC's payroll records, the Labor Commissioner determined¹ that CCC owed certain workers overtime wages due to their misclassification as independent contractors.² On October 2, 2020, CCC

¹We note that the determination was issued by Jennifer Jenkins, an auditor/investigator, designated by the Labor Commissioner to issue a decision in accordance with NRS 607.205 and NAC 607.310. For simplicity, we use the term Labor Commissioner herein.

²We do not recount the facts except as necessary for our disposition.

timely objected to the determination and requested a hearing pursuant to NAC 607.070(1). Despite acknowledging that the hearing request was timely, the Labor Commissioner denied it. Then, on November 12, 2020, the Labor Commissioner issued a final order setting forth “Findings of Facts and Conclusions of Law,” requiring CCC to reimburse unpaid wages and pay significant monetary penalties. On December 14, 2020, CCC timely filed a petition for judicial review in district court and requested a trial de novo under NRS 607.215(3). However, the petition was not served until January 25, 2021.

In the interim, on January 6, 2021, the Labor Commissioner scheduled a hearing in the matter to commence on January 28, 2021, despite having issued a purportedly final order in November.³ After being served with the petition for judicial review, the Labor Commissioner vacated the January hearing at CCC’s request, reserving the right to seek dismissal of the petition for “lack of jurisdiction or any other reason.”

Subsequently, the Labor Commissioner filed a motion to dismiss the petition, primarily asserting that CCC failed to exhaust its administrative remedies because of its refusal to participate in the January 28 administrative hearing. CCC opposed the motion, arguing that it was required to file its petition within 30 days of the Labor Commissioner’s final order, and it had exhausted its administrative remedies because the Labor Commissioner had denied its request for a hearing. Thus, CCC argued that the district court had jurisdiction over the petition and should resolve it on the merits. The district court ultimately dismissed the petition and remanded the matter to the Labor Commissioner “to conduct a hearing and

³We note that NAC 607.070(3) requires a hearing to be scheduled “[w]ithin 15 days after the last date on which an objection may be filed.”

enter a final decision.” Although the court did not specifically find that CCC had failed to exhaust its administrative remedies it nevertheless granted dismissal, concluding that “the factual record is not fully developed because the Labor Commissioner did not hold a hearing.” This appeal followed.

On appeal, CCC argues that there were no administrative remedies to exhaust because the Labor Commissioner denied its request for a hearing and issued a final order. Therefore, CCC asserts, its petition was timely filed and should have been decided on the merits.⁴ The Labor Commissioner in turn argues that CCC failed to exhaust its administrative remedies by refusing to participate in a hearing, rendering its petition nonjusticiable. Thus, the Labor Commissioner contends that the district court properly dismissed the petition and remanded for an administrative hearing.

This court reviews de novo a district court’s dismissal of a petition for judicial review. *Benson v. State Eng’r*, 131 Nev. 772, 776, 358 P.3d 221, 224 (2015). Specifically, dismissals based on lack of subject matter jurisdiction or failure to exhaust administrative remedies are reviewed de novo. *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (citing *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009) (applying de novo review to an order granting a motion to dismiss for lack of subject matter jurisdiction)); *see also Benson*, 131 Nev.

⁴On appeal CCC argues that the district court should have accepted its petition, instead of dismissing it, in order to set a trial de novo. However, CCC raises its desire for a trial de novo for the first time in its reply, and therefore, we need not address it. *See Weaver v. State, Dep’t of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d 193, 198-99 (2005) (explaining that this court need not consider issues raised for the first time in appellant’s reply brief).

at 776, 358 P.3d at 224 (considering de novo whether administrative remedies were exhausted). Questions of law, including issues of statutory interpretation, are also reviewed de novo. *Nev. Gaming Comm'n v. Wynn*, 138 Nev., Adv. Op. 20, 507 P.3d 183, 186 (2022) (citing *Pawlik v. Deng*, 134 Nev. 83, 85, 412 P.3d 68, 70-71 (2018)); *Webb v. Shull*, 128 Nev. 85, 88, 270 P.3d 1266, 1268 (2012) (applying de novo review to questions of statutory interpretation). This court does “not give any deference to the district court decision” when conducting de novo review. *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011). Because we must determine whether the statutory scheme permitted the district court to dismiss CCC’s petition for judicial review and remand the matter for further proceedings, instead of resolving it on the merits, we conduct review de novo here.⁵

Dismissal of a petition for judicial review is proper where a party filed the petition before exhausting its administrative remedies. “[W]hether couched in terms of subject-matter jurisdiction or ripeness, a person generally must exhaust all available administrative remedies before initiating a lawsuit and failure to do so renders the controversy nonjusticiable.” *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007). “The ‘exhaustion doctrine’ is sound judicial policy. If

⁵Arguably, CCC timely filed a petition for judicial review from a final order and therefore the petition was properly before the district court. See NRS 233B.130(2)(d) (a petition for judicial review must “[b]e filed within 30 days after service of the final decision of the agency”). However, this does not automatically make dismissal improper. We note that the district court did not specifically find it lacked jurisdiction over CCC’s petition when dismissing it, but rather focused on the failure to exhaust administrative remedies as rendering the controversy nonjusticiable. See *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007).

administrative remedies are pursued to their fullest, judicial intervention may become unnecessary.” *First Am. Title Co. of Nev. v. State of Nev.*, 91 Nev. 804, 806, 543 P.2d 1344, 1345 (1975). Finally, exhausting the administrative review process facilitates development of a factual record by the administrative agency in anticipation of appellate review. *See Benson*, 131 Nev. at 780, 358 P.3d at 226 (citing *Malecon Tobacco, LLC v. State ex rel. Dep’t of Taxation*, 118 Nev. 837, 840-41, 59 P.3d 474, 476 (2002)).

Relevant here, as the Nevada Supreme Court recognized in *Baldonado v. Wynn Las Vegas, LLC*, “[i]n Nevada, the Legislature has entrusted the labor laws’ enforcement to the Labor Commissioner, unless otherwise specified.” 124 Nev. 951, 961, 194 P.3d 96, 102 (2008). In *Baldonado*, the supreme court indicated that notwithstanding the permissive language of the relevant statutes,⁶ holding a hearing is mandatory, not discretionary. *Id.* at 963, 194 P.3d at 104 (stating “the Labor Commissioner’s duty to *hear* and resolve enforcement complaints is not discretionary” (emphasis added)). The supreme court recognized, citing to NRS 607.215,⁷ that 30-days from the conclusion of the *hearing*, “the Labor

⁶The Nevada Supreme Court specifically referenced NRS 607.205 and NRS 607.207 in its opinion, but not NAC 607.070, which sets forth specific hearing procedures for the Labor Commissioner. Although the supreme court did not address the pertinent administrative code provisions in *Baldonado*, the relevant statutes, as well as the supreme court’s interpretation of those statutes, control here.

⁷This statutory provision is cited by both parties on appeal as it relates to the Labor Commissioner’s November 12 final order. Arguably, under *Baldonado*, the November order could not be considered final because it was issued before the requisite administrative hearing was conducted. Nevertheless, the record shows that the Labor Commissioner intended, at least initially, to issue a final order in November. Therefore, CCC should not be faulted for treating it as such and filing its petition for judicial review.

Commissioner must render a written decision resolving the complaint at issue, based on the facts and legal conclusion ‘developed at the hearing.’” *Id.* at 962, 194 P.3d at 103. The supreme court emphasized that “resolving labor law complaints is perhaps one of the Labor Commissioner’s most significant enforcement mechanisms” and “[i]n this manner, the Labor Commissioner’s expertise is optimized, and the parties then have an opportunity to petition the district court for judicial review and, ultimately, appeal to this court.” *Id.* at 963, 194 P.3d at 104.

In addressing CCC’s petition for judicial review, the district court properly recognized that “the Court defers to the agency’s findings of fact, but reviews questions of law de novo,” citing to *Bombardier Transportation (Holdings) USA, Inc. v. Nevada Labor Commissioner*, 135 Nev. 15, 18, 433 P.3d 248, 252 (2019). In conducting its review, we affirm that “[t]he [district] court may remand or affirm the final decision or set it aside in whole or in part.” NRS 233B.135(3). Further, “[i]t is well established that when a district court acts as a reviewing court over administrative agencies it has the power to remand the case to the agency for further factual determinations.” *Silberkraus v. Woodhouse*, No. 76040, 2019 WL 1772051, at *2 (Nev. Apr. 19, 2019) (Order of Affirmance) (citing *Gen. Motors v. Jackson*, 111 Nev. 1026, 1029-30, 900 P.2d 345, 348 (1995) (“[I]n enacting NRS 233B.135 the legislature intended for the district court to have the power to reverse and remand a decision for a factual determination where there is no evidence on the record to decide the issue. This court has also recognized that a reviewing court has the inherent authority to remand administrative agency cases for factual determinations.”)). In addition, a district court may remand a final decision of an agency if it was affected by an error of law, “[c]learly erroneous in view

of the reliable, probative and substantial evidence on the whole record,” “arbitrary or capricious or characterized by abuse of discretion,” or “affected by other error of law.” NRS 233B.135(3).


In this case, the district court did not specifically find that CCC failed to exhaust its administrative remedies, only that the administrative remedy of a hearing had yet to be exhausted.⁸ Pursuant to *Baldonado*, the Labor Commissioner was required to conduct an administrative hearing before entering a final order. As such, the Labor Commissioner’s decision to issue the November 12 order without a hearing was an error of law. See NRS 233B.135(3). Unquestionably, this error adversely affected the Labor Commissioner’s decision, as its factual findings were not developed as required.⁹ Indeed, the Labor Commissioner appears to have tacitly acknowledged this concern by attempting to schedule an administrative hearing in January. Therefore, the district court did not err in remanding the matter to the Labor Commissioner for further proceedings. See *Gen. Motors*, 111 Nev. at 1029-30, 900 P.2d at 348. Further, even if the district court had granted the petition, instead of dismissing it, and then remanded the matter to the Labor Commissioner for the requisite hearing, this would

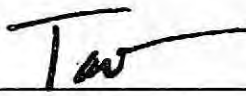
⁸In other words, even if the district court implicitly concluded that CCC failed to exhaust its administrative remedies, a conclusion which is not supported by the record, it reached the correct result by remanding the matter to the Labor Commissioner to conduct the required hearing. See *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (holding that this court will affirm the district court if it reaches the correct result, even for the wrong reason).

⁹We note that the district court, and indeed this court, are hamstrung in determining whether there is substantial evidence to support the Labor Commissioner’s final order of November 12 as the order contains minimal factual findings due to the lack of a hearing. This underscores the importance of conducting the administrative review required by *Baldonado*.

have been within the court's discretion based on *Baldonado*. CCC has presented no cogent argument to show that the outcome would have been different had the district court granted its petition, or how CCC would be prejudiced by participating in an administrative hearing on remand that it had initially requested. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider claims that are not cogently argued or lack the support of relevant authority). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lynne K. Simons, Chief Judge
Madelyn Shipman, Settlement Judge
Brian R. Morris
Jeffrey A. Dickerson
Attorney General/Carson City
Washoe District Court Clerk