IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE DEPARTMENT; AND CANNON COCHRAN MANAGEMENT SERVICES, INC.,
Appellants,
vs.
STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF INDUSTRIAL RELATIONS; AND STATE OF NEVADA BOARD FOR THE ADMINISTRATION OF THE SUBSEQUENT INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS,
Respondents.

No. 83262-COA

FILED

JUN 28 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER REVERSING AND REMANDING

Las Vegas Metropolitan Police Department and Cannon Cochran Management Services, Inc., appeal from an order dismissing a petition for judicial review. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

In early 2018, Las Vegas Metropolitan Police Department (LVMPD) and Cannon Cochran Management Services Inc. (CCMSI), submitted a formal request for reimbursement, related to a prior industrial injury of an LVMPD officer, to the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers.[1] A week after they submitted their request, the State's Division of Industrial Relations submitted a recommendation to the Board concerning the reimbursement.

[1]We recount the facts only as necessary to our disposition.

Approximately 60 days later, the Board held a hearing and subsequently sent letters to LVMPD and CCSMI notifying them that the Board had accepted the request, but at a reduced amount. LVMPD and CCSMI sent a letter back to the Board, appealing the decision.

On September 28, 2018, the Board held a de novo hearing on LVMPD and CCSMI's appeal. The Board issued its findings of fact and conclusions of law, upholding its previous decision to accept the request at the reduced amount. LVMPD and CCSMI timely petitioned the district court for judicial review. The Department of Industrial Relations and the Office of the Attorney General then filed an intent to participate in the matter. The Board, Office of the Attorney General, and the Department of Industrial Relations transmitted the entire record on appeal from the administrative proceedings on November 9, 2020.

When LVMPD and CCSMI filed their opening brief, seven months had passed since the petition for judicial review was filed and five months had passed since the record was transmitted. The Department of Industrial Relations and Office of the Attorney General moved to dismiss the petition because LVMPD and CCSMI never transmitted the transcript of the evidence the agency relied upon in reaching its decision, as required by NRS 233B.131(1)(a), and because they failed to file their opening brief within 40 days of service of the petition for judicial review as required by NRS 233B.133(1).

In their opposition to dismissal, LVMPD and CCSMI argued that the record on appeal was already transmitted by the Board, and thus no further action was required on their behalf. They further argued that, under NRS 233B.131(1)(b), it is the administrative agency's burden to transmit the entire record to the district court. Finally, LVMPD and

CCSMI argued that timely filing the opening brief is not a jurisdictional requirement because NRS 233B.133(6) allows the district court to extend the time to file upon a demonstration of good cause. And they argued that their attorney's cancer diagnosis and related treatment, which occurred right after filing the petition, constituted good cause.

The Division of Industrial Relations and the Office of the Attorney General replied that the failure to transmit the transcript under NRS 233B.131(1)(a) is jurisdictional, and the district court has no statutory authority to extend that time. They argued that because LVMPD and CCSMI failed to meet their statutory requirements, the petition must be dismissed. They also argued that LVMPD and CCSMI did not meet their burden to demonstrate good cause to extend the time to submit the transcript or file their opening brief, using the factors set forth in *Scrimer v. Eighth Judicial District Court*, 116 Nev. 507, 998 P.2d 1190 (2000).

After briefing was completed and a hearing conducted, the district court dismissed the petition for judicial review. In doing so, the court reasoned that (1) LVMPD and CCSMI did not transmit the transcript of evidence as required by NRS 233B.131(1)(a); (2) the district court could extend the time to transmit under NRS 233B.131(1)(a) upon a showing of "good cause"; and (3) LVMPD and CCSMI did not meet their burden to show good cause, under the *Scrimer* factors, for the time to be extended to file the transcript.[2]

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[2]We note that the district court found that the failure to transmit the transcript as required "mooted" the issue of the timeliness of the filing the opening brief, and therefore, did not specifically determine if appellants demonstrated "good cause" for the delay in filing their opening brief by applying the proper standard of review for "good cause" as discussed herein.

On appeal, LVMPD and CCSMI challenge the district court's order dismissing the petition for judicial review, arguing that the district court erroneously interpreted NRS 233B.131(1)(a),(b), and that the district court erred when it applied the *Scrimer* factors to the requirements of NRS 233B.131(1), as well as implicitly applying *Scrimer* in concluding that the appellants' delay in filing their opening brief did not satisfy the "good cause" standard.

The plain language of NRS 233B.131(1)(a) requires the party petitioning for judicial review to transmit the evidence relied upon by the administrative agency to the district court

"Statutory interpretation is a question of law that we review de novo." *Vanguard Piping v. Eighth Judicial Dist. Court*, 129 Nev. 602, 607, 309 P.3d 1017, 1020 (2013) (quoting *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 460, 282 P.3d 751, 757 (2012)). When a statute is clear and unambiguous, the court must give it its plain meaning. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). A statute is ambiguous if it is capable of being understood in two or more senses by reasonably informed persons. *Id.* at 649, 730 P.2d at 442; *Thompson v. First Judicial Dist. Court*, 100 Nev. 352, 354, 683 P.2d 17, 19 (1984).

NRS 233B.131(a) states that "[t]he party who filed the petition for judicial review shall transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency." LVMPD and CCMSI argue that the term "shall" as set forth in NRS 233B.131(1)(a) is not mandatory. We disagree.

For purposes of NRS 233B.131, the term "shall" imposes a mandatory requirement. *See State v. Am. Bankers Ins. Co.*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990) (holding that, unless the legislative intent "demands another construction", "shall" is presumptively mandatory and

"may" is permissive). The legislative history of NRS 233B.131 also supports this interpretation. The Legislature first codified NRS 233B.131 in 1989. Hearing on A.B. 884 Before the Comm. on Judiciary, 65th Leg. (Nev., July 5, 1989). Under the original version of the statute, the administrative agency was the party required to transmit the entire record, including the transcript of evidence resulting in the final decision. *Id.*; *see also SIIS v. Thomas*, 101 Nev. 293, 296 n.2, 701 P.2d 1012, 1014 n.2 (1985) (explaining that under the original statutory scheme, the burden was "clearly" on the agency to transmit the record). NRS 233B.131 was amended in 2015 and split into two subsections. *See* NRS 233B.131(1)(a)-(b). Section (a) placed the requirement of transmission of the transcript on the petitioning party while section (b) required the remainder of the record to be transmitted by the administrative agency. *Id.* ("The agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the remainder of the record of the proceeding under review.").

Thus, the amendment divided the requirements of transmission between the petitioning party and the administrative agency. *Id.* Reading the statute to require the administrative agency to solely bear the requirement of transmitting the entire record would make the 2015 amendments to the statute, including the addition of NRS 233B.131(1)(a), superfluous, which we will not do. *See Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011) (stating that courts "avoid [a] statutory interpretation that renders language meaningless or superfluous"). Because there is no evidence that the Legislature intended otherwise, "shall" in NRS 233B.131 indicates a mandatory requirement, and the plain language of the statute governs. *Am. Bankers Ins. Co.*, 106 Nev. at 882, 802

P.2d at 1278; *Emp. Ins. Co. of Nev. v. Chandler*, 117 Nev. 421, 425, 23 P.3d 255, 258 (2001) ("[W]hen the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it."). Accordingly, NRS 233B.131(1)(a) requires the party petitioning for judicial review to transmit the transcript of evidence the administrative agency relied upon for its decision.[3]

We note that LVMPD's failure to comply with NRS 233B.131(1)(a) in many instances would be fatal to an appeal. Here, however, because the decision to dismiss the petition is too severe—considering that the district court already had the full record from the administrative agency's proceedings—we decline the promotion of a statutory requirement that has already been satisfied by the parties. *See, e.g., Marcuse v. Del Webb Cmtys., Inc.*, 123 Nev. 278, 285, 163 P.3d 462, 467 (2007) (stating that the court will not exalt form over substance). Therefore, we reverse the district court's dismissal of the petition for judicial review.

The district court's analysis under NRS 233B.133

Under NRS 233B.133(1), a party petitioning for judicial review "must serve and file a memorandum of points and authorities within 40 days after the agency gives written notice to the parties that the record of the proceeding under review has been filed with the court." If the petitioning party fails to do so, the district court has discretion to extend this time if the petition party can show "good cause." NRS 233B.133(6).

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[3]The Division of Industrial Relations and the Office of the Attorney General argue that the requirements of NRS 233B.131 are jurisdictional; and thus, the district court must dismiss the petition for judicial review. That argument, however, is belied by a plain reading of the statute, which allows the district court to extend the time to transmit the record from the administrative proceedings. *See* NRS 233B.131(1).

Here, the district court found that the failure to transmit the transcript, as required under NRS 233B.131, "mooted" the issue of the timeliness of the filing the opening brief; and therefore, the district court did not specifically determine if appellants demonstrated "good cause" for the delay in filing their opening brief. *See Spar Bus. Servs., Inc. v. Olson*, 135 Nev. 296, 299-300, 448 P.3d 539, 542-43 (2019). We, therefore, remand the case back to the district court for it to consider this issue in the first instance.[4]

Accordingly, we REVERSE and REMAND the case back to the district court for further proceedings consistent with this order.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Attorney General/Carson City
State of Nevada Department of Business and Industry/Div. of Industrial Relations/Las Vegas
Attorney General/Las Vegas
Eighth District Court Clerk

[4]We also note that the Nevada Supreme Court's holding in *Scrimer v. Eighth Judicial District Court*, 116 Nev. 507, 998 P.2d 1190 (2000), does not apply to the district court's "good cause" analysis under NRS 233B.133(6).