

IN THE SUPREME COURT OF THE STATE OF NEVADA

LORRAINE FORMATO,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION;
AND LYNDA PARVEN, AS
ADMINISTRATOR OF THE
EMPLOYMENT SECURITY DIVISION,
Respondents.

No. 86239

FILED

NOV 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a motion to dismiss a petition for judicial review in an unemployment benefits matter. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.¹

Respondent the State of Nevada Employment Security Division (ESD) determined that appellant Lorraine Formato had misstated her income and failed to report income from a pandemic-program loan, which resulted in an overpayment of benefits. Formato appealed this determination, and the appeals referee upheld the determination. The Board of Review declined review under NRS 612.515, which gives the Board of Review discretion to review cases not involving reversals or modifications of the ESD Administrator's determination. Formato then petitioned for judicial review. ESD and Lynda Parven, as ESD Administrator, moved to dismiss Formato's petition because Formato did not name the Board of Review in the petition. The district court agreed with ESD and Parven that

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

the Board of Review was a necessary party, and dismissed Formato's petition. The court later denied Formato's motion to alter or amend. Formato appeals.

Formato argues that NRS 612.530 does not require that she name the Board of Review in her petition, and there is no other case, statute, or regulation setting forth such a requirement. We review a motion to dismiss for lack of subject matter jurisdiction *de novo*.² *Whitfield v. Nevada State Pers. Comm'n*, 137 Nev.345, 349, 492 P.3d 571, 575 (2021).

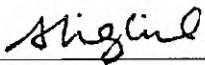
This court has previously held that NRS 612.530(1)'s requirement to name all relevant defendants, like NRS 233B.130's naming requirement, is mandatory and jurisdictional. *Bd. of Rev., Nev. Dep't of Emp., Training & Rehab. v. Second Judicial Dist. Court*, 133 Nev. 253, 255, 396 P.3d 795, 797 (2017); *see also Washoe County v. Otto*, 128 Nev. 424, 432, 282 P.3d 719, 725 (2012) (addressing NRS 233B.130's naming requirement). Thus, a district court lacks jurisdiction if the petitioner fails to timely name all necessary defendants under this statute.

NRS 233B.039(3)(a) expressly provides that “[t]he special provisions of . . . Chapter 612 of NRS for . . . the judicial review of decisions of the Employment Security Division . . . prevail over the general provisions of this chapter.” *See also Piroozi v. Eighth Judicial Dist. Court*, 131 Nev. 1004, 1009, 363 P.3d 1168, 1172 (2015) (holding that a specific statute will control over a more general one). Thus, while NRS 233B.130(2)(a) provides that petitions for judicial review must name “the agency and all parties of

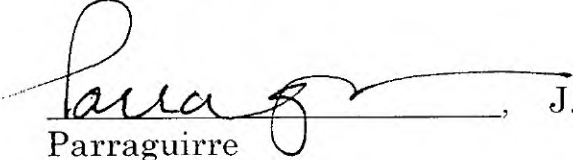
²We are not persuaded by ESD and Parven's waiver assertion, as Formato addressed whether she had to name the Board of Review in her opposition to ESD and Parven's motion to dismiss.

record to the administrative proceeding,” NRS 612.530(1) requires only that the petitioner name aggrieved parties and “any other party to the proceedings *before the Board of Review.*” (emphasis added). Additionally, NRS 612.530(2) provides that the petition must be “served upon the Administrator,” and that “such service shall be deemed completed service on all parties.” The plain language in NRS 612.530 does not require that the Board of Review be named as a party because the Board of Review is not an aggrieved party, nor could it appear before itself. Because NRS 612.530(1) does not plainly require the petitioner to also name the Board of Review, we conclude that the district court erred by dismissing Formato’s petition on this basis. And because this issue is dispositive, we need not address Formato’s remaining argument regarding the district court’s denial of her subsequent motion to alter or amend. We therefore

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Stiglich


_____, J.
Lee


_____, J.
Parraguirre

cc: Hon. Timothy C. Williams, District Judge
Nevada Legal Services/Las Vegas
State of Nevada/DETR - Las Vegas
State of Nevada/DETR - Carson City
Eighth District Court Clerk