

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, DEPARTMENT
OF BUSINESS AND INDUSTRY,
DIVISION OF INSURANCE,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
RONALD D. PARRAGUIRRE,
DISTRICT JUDGE,

Respondents,

and

HARRY A. BAUT,
Real Party in Interest.

No. 39448

FILED

JUN 26 2002

JANETTE W. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
INTERIM DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This petition for a writ of prohibition challenges a district court order denying petitioner's motion to dismiss the real party in interest's petition for judicial review. Although we generally will not consider writ petitions challenging orders denying motions to dismiss, we will deviate from this policy to promote judicial economy and administration.¹ Because it appeared that this could be such a case, we ordered the real party in interest to answer the petition. Having considered the writ petition, the answer and the documents appended to each, we conclude that our intervention is warranted in this case.

In June 2001, the Division of Insurance filed an administrative complaint against Harry Baut, a Nevada licensed resident

¹Smith v. District Court, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (1997).

insurance agent, and several others for unauthorized insurance activity. In the administrative proceeding, Baut filed several pre-hearing motions, including a motion for appointment of an impartial hearing officer under NRS 679B.330, and a motion to dismiss or for summary judgment. NRS 679B.330 provides that the Insurance Commissioner (or his deputy, assistant or appointee) shall preside at hearings, but the Commissioner may appoint a person who is not associated with the division to conduct a hearing if the hearing requires a disinterested or impartial hearing officer. Baut asserted that he and the Insurance Commissioner had previously been involved in contentious confrontations over other insurance matters, and he questioned the Commissioner's impartiality. In the motion to dismiss or for summary judgment, Baut argued that the Insurance Commissioner lacked jurisdiction because all parties involved in the insurance plan at issue had signed agreements specifically stating that the plan was not subject to state regulation but was instead to be regulated under federal law: specifically, the Employee Retirement Income Security Act (ERISA).

The Insurance Commissioner denied the motions, and the matter proceeded to a hearing on October 22, 2001. On October 23, 2001, the Commissioner continued the hearing so that the parties could bring in experts to testify on the applicability of ERISA.

On October 24, 2001, Baut filed a petition in the district court for judicial review of the administrative orders denying his motions for an impartial hearing officer and dismissal or summary judgment. On December 20, 2001, the Division moved to dismiss the petition for judicial review on the primary ground that the district court lacked jurisdiction under NRS 233B.130(1) over the two intermediate administrative orders. Baut opposed the motion, and counter-moved to stay the administrative

proceeding. The district court denied the Division's motion to dismiss, and granted Baut's motion for a stay. The Division then filed this writ petition, which contends that the district court lacks jurisdiction to review the two intermediate administrative rulings. We agree, and we therefore grant the petition.

Generally, only final agency decisions are reviewable by the district court under NRS 233B.130; however, an agency's preliminary, procedural or intermediate act or ruling in a contested case is reviewable under NRS 233B.130(1)(b) if review of the final decision would not provide an adequate remedy. Because judicial review of the final decision in this case would provide an adequate remedy, judicial review is not available and the district court lacks jurisdiction over the administrative rulings at issue.

Baut's reliance on NRS 233B.135 and 233B.140 in his answer is misplaced because these statutes apply only to final administrative decisions. The two decisions presently at issue are clearly not final decisions. Baut's reliance on Department of Human Resources v. UHS of The Colony,² for the proposition that he is entitled to judicial review in this instance, is also misplaced. In that case, there was no statutory provision for determining whether the health care provider was subject to the provisions of NRS Chapter 439A.³ The health care provider was therefore entitled to judicial review of the preliminary administrative ruling that its acquisition of an MRI machine was subject to certificate of need approval under that chapter because review of the final


²103 Nev. 208, 735 P.2d 319 (1987).

³Id. at 210, 735 P.2d at 320.

administrative decision would not provide an adequate remedy.⁴ In this case, however, there is no question that Baut is subject to regulation by the Division of Insurance. Regardless whether the insurance plan is subject to state regulation, Baut clearly is; he is licensed by the Division under NRS Chapter 683A and his insurance activities are subject to review by the Insurance Commissioner, who is authorized to suspend or revoke his license. After the administrative proceeding is concluded, Baut may seek judicial review if he is aggrieved by the final decision.

Accordingly, as the district court lacks jurisdiction and petitioner lacks a plain, speedy and adequate remedy at law, we conclude that a writ of prohibition is warranted.⁵ The clerk of this court shall issue a writ of prohibition directing the district court to vacate its stay, and dismiss the petition for judicial review so that the Insurance Commissioner may complete the administrative proceedings.

It is so ORDERED.


Shearing J.


Rose J.


Becker J.

⁴Id.

⁵NRS 34.320; NRS 34.330.

cc: Hon. Ronald D. Parraguirre, District Judge
Attorney General/Carson City
Elizabeth J. Foley
Clark County Clerk