IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF THEODOSIA M. LOPEZ.

ALBERT F. LOPEZ,
Appellant,
vs.
WASHOE COUNTY TREASURER,
Respondent.

No. 39924

FILED

MAY 05 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying Albert Lopez's motion for interest. Because Lopez, the residual beneficiary of his adopted mother's estate, could not be located, the sum of $50,537.15 was deposited with the Washoe County Treasurer for safekeeping pursuant to NRS 151.170. On April 6, 2001, Lopez filed a verified claim for his funds pursuant to NRS 151.210. On April 26, the district court ordered the Washoe County Treasurer to pay Lopez's funds to him, and the next day, the Treasurer issued a check payable to Albert Lopez for $50,537.15. Subsequently, on May 16, 2001, the district court granted Lopez's ex parte request for interest on the principal under NRS 99.040(1)[1] and issued an

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[1]NRS 99.040(1) provides, in relevant part:

> 1. When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the commissioner of financial institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due, in the following cases:

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amended order for payment of the principal plus $11,390.94 in interest. The Washoe County Treasurer refused to pay the interest because Lopez's funds had been held in a non-interest bearing account.

On January 8, 2002, Lopez filed a motion for the payment of compensation of $2,789.00 by Washoe County for the use of his funds. Lopez based this figure on a letter from Bank of America stating that banking fees were offset by earnings credits if a minimum of $800,000.00 was maintained in the Washoe County Treasurer's accounts. The earnings credit rate at the time was two percent. Hence, Lopez sought a two percent interest rate on his principal. Washoe County opposed the motion and moved to set aside the amended order awarding interest to Lopez. On June 11, 2002, the district court entered an order denying Lopez's motion for payment of interest and granted Washoe County's motion to set aside the amended order of May 16, 2001. Lopez now appeals the district court's order denying him interest and granting the motion to set aside the amended order.

Lopez first argues that he is entitled to interest under either NRS 99.040(1)(a) or (c), which provide for the payment of interest upon implied contracts or upon money used for another's benefit without the owner's consent. Lopez contends that there was either an implied contract between the Treasurer, as fiduciary of his funds, and himself, or that

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> (a) Upon contracts, express or implied, other than book accounts.
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> . . . .
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> (c) Upon money received to the use and benefit of another and detained without his consent.

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Washoe County used his funds, without his consent, for its personal benefit to help maintain the minimum balance required for the bank to waive its fees. He alleges that Washoe County, in violation of its fiduciary duty, has attempted to confiscate the benefits from the use of his funds without compensating him for the public use of his money.

We will not disturb a district court's factual findings unless they are clearly erroneous and not based on substantial evidence.[2] A district court's interpretation of a statute is subject to de novo review.[3] In construing a statute, we look first to the statutory language. If the language is unambiguous, we need not look beyond the ordinary meaning of the language.[4]

Here, the district court found that it had erroneously granted the amended order granting interest to Lopez because the Washoe County Treasurer had no notice of the motion for interest. The district court further determined that NRS 151.170[5] did not obligate the Washoe County

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[2]Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997).

[3]State, Emp. Sec. Dep't v. Holmes, 112 Nev. 275, 283, 914 P.2d 611, 616 (1996).

[4]City Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989).

[5]NRS 151.170 provides, in pertinent part:

> If property is assigned or distributed to a person who cannot be found . . . and the property or any part thereof consists of money, the personal representative may deposit the money, in the name of the assignee or distributee, with the county treasurer of the county in which the proceedings are pending. The county treasurer shall give a receipt for the money and is liable

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Treasurer to do anything more than act as a depository for Lopez's funds and keep the funds secure.[6] We agree.

Because interest on a judgment was not allowed at common law, the courts may only award interest where allowed by statute.[7] Lopez relies on NRS 99.040 as the statute allowing him interest. Our examination of the statute shows that it is not applicable to Lopez's case. Although Lopez argues that there was an implied contract between himself and the Washoe County Treasurer because the Treasurer had a fiduciary obligation to him, neither a contract implied in fact nor in law arose. There was no contract implied in fact because there was no mutual agreement or mutual intent to promise.[8] A contract implied in law, or quasi-contract, is inferred by law to further the ends of justice when one party has conferred a benefit on the other, and the recipient of the benefit would be unjustly enriched.[9] A contract implied in law "is designed to restore the aggrieved party to his former position by the return of the

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> upon the official bond of the county treasurer therefor. The receipt must be received by the court as a voucher in favor of the personal representative with the same force and effect as if executed by the assignee or distributee.

[6]Although not stated in the district court's order, the district court apparently determined that NRS 99.040 was inapplicable to Lopez's case, as Lopez argued in his reply brief to the opposition to his motion for interest that NRS 99.040 provided a basis upon which to award interest.

[7]Gibellini v. Klindt, 110 Nev. 1201, 1208, 885 P.2d 540, 544 (1994).

[8]42 C.J.S. Implied Contracts § 3 (1991).

[9]42 C.J.S. Implied Contracts § 4 (1991).

thing delivered or the money expended."[10] Although Lopez argues that Washoe County received a benefit from the application of Lopez's money toward a minimum balance that enabled it to escape banking fees, this did not enrich the County unjustly. The money was deposited in a non-interest bearing account; thus, the County did not receive or use interest on the funds. Lopez received the benefit of waived banking fees because such a cost could have been passed on to him.[11] Furthermore, Lopez has failed to show that his money directly benefited Washoe County, as the minimum balance in the account at all times that the County held Lopez's money was two hundred thousand dollars over the minimum balance required for a waiver of banking fees. Even without Lopez's $50,537.15, there would have been sufficient funds in the account to escape banking fees. Finally, the cases cited by Lopez for the proposition that a fiduciary or custodian of funds must pay interest to the owner of the principal are distinguishable because, in all of the cases cited, interest was actually earned on the principal amount held by the fiduciary. Here, in contrast, no interest was earned because the funds were held in a non-interest bearing account. Therefore, the plain language of NRS 99.040(1)(a) supports the district court's determination that NRS 99.040(1)(a) was not applicable. Similarly, because the County did not benefit from Lopez's funds, the district court properly determined that Lopez was not entitled to interest pursuant to NRS 99.040(1)(c).

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[10]Id.

[11]Vance v. Barrett, 345 F.3d 1083, 1089 (9th Cir. 2003) (concluding that state officials may deduct reasonable expenses "'for the reimbursement of the cost of government services'") (quoting United States v. Sperry Corp., 493 U.S. 52, 63 (1989)).

Lopez next argues that the use of his funds by Washoe County without his knowledge or consent constituted a public taking without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution[12] and Article 1, Section 8 of the Nevada Constitution.[13] We conclude that this argument lacks merit.

In Brown v. Legal Foundation of Washington, the United States Supreme Court considered the issue of whether the use of interest earned on clients' funds in IOLTA accounts for non-profit legal services for indigents constituted a taking without just compensation.[14] The Court held that the use of the interest earned on clients' funds for legal representation of indigent clients constituted a taking for a public use, but that no compensation was due because the property owners suffered no loss.[15] The Takings Clause was designed "'to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'"[16] Here, in contrast, if we were to agree with Lopez's argument that the use of his money constituted a

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[12]The United State Constitution prohibits the taking of private property "for public use, without just compensation." U.S. Const. amend. V. The Fifth Amendment is applied to the states through the Due Process Clause of the Fourteenth Amendment. See Brown v. Legal Foundation of Washington, 538 U.S. 216, 232 n.6 (2003).

[13]Although this argument was not properly raised below and preserved for appeal, we may consider constitutional error sua sponte. McNair v. Rivera, 110 Nev. 463, 468 n.6, 874 P.2d 1240, 1244 n.6 (1994).

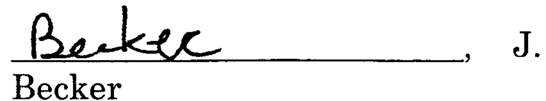
[14]538 U.S. 216.

[15]Id. at 217.

[16]Vance, 345 F.3d at 1089 (quoting Armstrong v. United States, 364 U.S. 40, 49 (1960)).

taking without just compensation, the public would be forced to bear the cost of safekeeping funds for only a few people. This would subvert the purpose of the Takings Clause. Moreover, the Washoe County Treasurer merely held Lopez's money for safekeeping; it was not used for a public purpose because, even without his funds, Washoe County maintained a minimum balance over that required to escape banking fees. Even if the County's retention of Lopez's money constituted a taking for a public use, Lopez suffered no loss. The Washoe County Treasurer paid him exactly the amount that he received from his adopted mother's estate. The principal was held in a non-interest bearing account; therefore, unlike the situation in Brown, no interest accrued on the principal.[17] Because Lopez suffered no loss, no compensation is due him.

Accordingly, we ORDER the judgment of the district court AFFIRMED.



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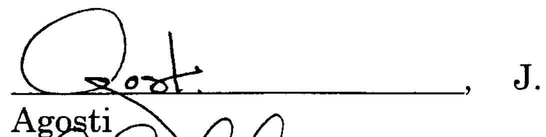

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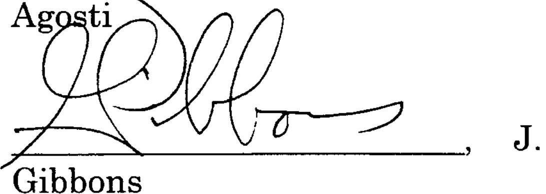

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[17]The situation is also distinguishable from that of Brown because, in Brown, Washington state law required attorneys to deposit client funds in interest bearing accounts. 538 U.S. at 216. Here, however, no state law requires the Washoe County Treasurer to place funds it is holding for safekeeping in interest bearing accounts.

cc: Hon. Peter I. Breen, District Judge
Stephens Knight & Edwards
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk