

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT B. METZ,
Appellant,
vs.
NEVADA DIVISION OF INSURANCE,
Respondent.

No. 41755

FILED

APR 19 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order dismissing a petition for judicial review in a bail agent license revocation matter. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

In February 2003, as part of proceedings commenced by respondent, the Nevada Division of Insurance, an administrative decision was rendered revoking appellant Robert B. Metz's resident bail agent license and imposing an administrative fine against him. Subsequently, Metz, in proper person, filed a petition for judicial review, which was received by the district court on March 20, 2003, and filed on March 25, 2003. Also on March 25, 2003, Metz mailed a copy of the petition to the Division, which received it on March 27, 2003. Thereafter, the district court set a schedule detailing the deadlines for performing the procedural requirements set forth in NRS Chapter 233B.¹

¹See NRS 233B.130(3) and 233B.131.

Instead of filing the record or a notice of intent to participate,² as the district court had directed, however, the Division moved to dismiss or quash defective service, based upon Metz's failure to formally serve the Division and the Attorney General with process under NRCP 4(d), and under NRS 41.031(2), which requires personal service of process on governmental agencies. Metz opposed dismissal, filing motions to stay the administrative order and to "dismiss" the administrative proceedings for the Division's failure to comply with the court's order.

The district court's ensuing order quashed Metz's service of the petition for judicial review because Metz had failed to personally serve the petition and summonses under NRCP 4(d), and apparently, NRS 41.031(2). Consequently, as the petition therefore had not been served within forty-five days of filing, as required under NRS 233B.130(5), the court also granted the motion to dismiss. Finally, the court struck as moot Metz's motions to stay and to dismiss.

Metz subsequently moved for reconsideration, which the district court denied. Thereafter, Metz timely filed a notice of appeal from the district court's dismissal order. As directed, the Division timely filed a response to Metz's appeal, to which Metz has submitted a proposed reply.³ The order denying reconsideration, however, is not substantively

²See id.

³We construe Metz's July 12, 2005 "letter" in opposition to respondent's response as a proposed reply. Although Metz was not granted leave to file documents in proper person, see NRAP 46(b), we have considered his proposed reply. Accordingly, we direct the clerk of this court to file the proposed reply.

appealable;⁴ thus, to the extent that Metz challenges that order, we are without jurisdiction to consider it.

The Division, in its response, argues that judicial review is appellate civil practice and, since the rules of civil procedure govern “original and appellate practice and procedure in judicial proceedings in the district courts,”⁵ NRCP 4(d)’s service of process requirements must apply to NRS 233B.130 petitions for judicial review.⁶ This court reviews questions of law, including issues of statutory and rule construction, de novo.⁷

In State, Department of Motor Vehicles v. Bremer,⁸ a 1997 case, this court concluded that the district court’s power to consider petitions for judicial review “arises” under the Nevada Constitution, article 6, § 4. Consequently, the district court’s authority to entertain NRS 233B.130 petitions for judicial review originates under the court’s

⁴Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

⁵See Order Adopting Rules of Civil Procedure (Nev., August 29, 1952).

⁶Under NRS 679B.370(2), an aggrieved party may appeal from a Commissioner’s order in the manner provided in NRS Chapter 233B.

⁷Southern Nev. Homebuilders v. Clark County, 121 Nev. __, __, 117 P.3d 171, 173 (2005).

⁸113 Nev. 805, 815, 942 P.2d 145, 151 (1997) (concluding that, because judicial review proceedings arise in the district court and the Legislature expressly provided for this court’s appellate review of those proceedings under NRS 233B.150, this court has appellate jurisdiction over orders resolving petitions for judicial review).

original, not appellate, jurisdiction.⁹ Further, the only jurisdictional and mandatory requirement for preserving the right to judicial review under NRS 233B.130 is timely filing a petition in substantially correct form; when a party fails to meet other procedural requirements, dismissal is not required, but merely discretionary.¹⁰ Here, Metz timely filed his petition for judicial review; thus, any failure to meet other procedural requirements did not require dismissal.

NRS 233B.130(5) provides that petitioners must perfect service within forty-five days of filing the petition. Neither that statute, nor any other provision within Nevada's Administrative Procedure Act,¹¹ specifically requires personal service or specifies which—or even whether—the rules of civil procedure apply to petitions for judicial review.

Even assuming, for purposes of this appeal, that the rules of civil procedure generally apply to petitions for judicial review, a petitioner is not required to serve process in accordance with NRCP 4. NRCP 4(d) requires a plaintiff to ensure that personal service “of the summons and complaint” be made upon the defendants.¹² Thus, even if the rules of civil procedure apply to Metz' petition, NRCP 4 ostensibly does not; no “complaint” was filed, but rather a petition for judicial review, in which

⁹Id. at 814-15, 942 P.2d at 151 (citing with approval the conclusion, even though disapproving the reasoning, in Nev. Tax Com. v. Mackie, 74 Nev. 276, 279, 329 P.2d 448, 449 (1958)).

¹⁰Civil Serv. Comm'n v. Dist. Ct., 118 Nev. 186, 190, 42 P.3d 268, 271 (2002).

¹¹NRS Chapter 233B.

¹²See also NRCP 4(b) (providing that a summons be directed to a defendant).

there was no plaintiff or defendant, but rather a petitioner and respondent.

As Metz points out, the rules governing service of a summons and complaint are intended to provide a defendant with notice of an action against him, and to require his presence in court to defend the action.¹³ Petitions for judicial review, however, involve on-going underlying proceedings, and only the agency and “parties of record” to the administrative action may be named as respondents.¹⁴ Thus, the agency and all parties are already aware of the matter. And unlike the purpose behind a summons, under NRS 233B.130(3), the agency and any party must file a notice of intent to participate within twenty days of service of the petition only if they “desire to participate” in the district court proceedings.

As a result, NRCP 4’s service of process requirements do not apply to judicial review proceedings. Likewise, for the same reasons, NRS 41.031’s personal service requirements do not apply to petitions for judicial review. Instead, even assuming that the rules of civil procedure

¹³See Orme v. District Court, 105 Nev. 712, 715, 782 P.2d 1325, 1327 (1989) (“The primary purpose underlying the rules regulating service of process is to insure that individuals are provided actual notice of suit and a reasonable opportunity to defend.”); Berry v. Equitable M. Co., 29 Nev. 451, 456, 91 P. 537, 538 (1907) (“The object and purpose of the summons is to bring defendants into court.”).

¹⁴NRS 233B.130(2). This subsection specifically requires a petition for judicial review to “[n]ame as respondents the agency and all parties of record to the administrative proceeding.” Thus, it appears that Metz, in styling the caption of his petition to name all parties to the administrative action, including himself, as respondents, was attempting to comply with NRS 233B.130(2), and not “attempting to represent” the bail bond companies, as suggested by the district court.

are relevant to judicial review proceedings, NRCP 5(b)(2)(B), which governs service of "pleadings and other papers" and allows for service by mail, is more appropriately applied here.¹⁵

Accordingly, a petitioner for judicial review is not required to perfect service of process under NRCP 4(d). Thus, Metz's failure to personally serve a summons and the petition upon the Division was not fatal to the processing of his petition, and the district court improperly quashed service on this basis. Further, as Metz timely filed his petition and mailed a copy of it to the Division, which the Division admittedly received, Metz properly complied with NRS 233B.130. Consequently, the court's order dismissing Metz's petition is reversed and the matter is remanded for further proceedings.

It is so ORDERED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

¹⁵See Highlands Golf Club v. Ashmore, 922 P.2d 469, 474 (Mont. 1996) (holding, for reasons similar to those outlined above, that service under a rule analogous to NRCP 5 was "the more logical choice for effecting service" in proceedings concerning petitions for judicial review arising under the Montana Administrative Procedure Act); accord Douglas Asphalt Co. v. Pub. Serv. Comm., 589 S.E.2d 292, 293-94 (Ga. Ct. App. 2003) (concluding that, since the Georgia APA did not expressly require personal service or otherwise specify how to perfect service, service by mail sufficed); Jaco v. Dept. of Health, Bureau of Med., 950 S.W.2d 350, 352 (Tenn. 1997) (concluding that petitioners for judicial review were not required to serve summonses).

cc: Hon. Steven P. Elliott, District Judge
Robert B. Metz
Attorney General George Chanos/Carson City
Washoe District Court Clerk