

IN THE SUPREME COURT OF THE STATE OF NEVADA

CO LINX,
Appellant,
vs.
OSBALDO RANGEL; RENO TRUSS,
INC.; EXPRESS PERSONNEL; AND
EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Respondents.

No. 42060

FILED

JUL 11 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a petition for judicial review in a workers' compensation case. First Judicial District Court, Carson City; William A. Maddox, Judge.

This court reviews an order granting a motion to dismiss for failure to effect timely service for abuse of discretion.¹

Although acknowledging its failure to properly serve the Department of Administration's appeals office,² appellant Co Linx argues the district court erred in dismissing its petition when there was substantial compliance with the technical requirements of NRS 233B.130. Co Linx further argues that the appeals office did have notice of the petition six days after it was filed, since co-respondent EICON served its

¹Abreu v. Gilmer, 115 Nev. 308, 312-13, 985 P.2d 746, 749 (1999).

²NRS 233B.130(5) mandates that petitions for judicial review of an administrative agency final decision "must be served upon the agency and every party within 45 days after the filing of the petition, unless, upon a showing of good cause, the district court extends the time for such service."

notice of intent to participate on the appeals office, and in that notice EICON referred to “the above entitled Petition for Judicial Review.” Further, Co Linx contends that no party was prejudiced by its failure to serve the appeals office, since under NRS 233B.133 the petition would only have gone forward when the appeals office notified the parties that the record of the proceeding under review had been filed with the reviewing court. Thus, Co Linx claims that the only effect of its failure to serve was “mere delay of the Petition for Judicial Review process.”

Co-respondent Express Personnel contends that the district court did not err in granting its motion to dismiss, since Co Linx never showed good cause for its failure to timely serve its petition on the appeals office. Express argues that Co Linx never offered any reason or excuse for its failure to timely serve process, nor did it timely request an extension. Co-respondent Osbaldo Rangel, in his answering brief to this court, simply adopted and incorporated by reference the position of co-respondent Express Personnel. Co-respondent Reno Truss did not file an answering brief, as it is proceeding in this appeal in proper person.³

Co-respondent EICON contends that it is not a proper party to this appeal. No argument was ever raised that EICON or its insured, Reno Truss, had any liability for any costs or workers’ compensation benefits. EICON argues the decision of the appeals officer to hold Co Linx liable under the last injurious exposure rule severed all potential liability of EICON and Reno Truss. However, in addition to being a named party in both the underlying proceeding and this appeal, EICON filed a notice of

³We note that since Reno Truss failed to file an intent to participate after service of the petition for judicial review, the district court on remand may dismiss Reno Truss pursuant to NRS 233B.130(3).

intent to participate in the petition for judicial review. Thus, we conclude that EICON is indeed a party to this appeal.⁴ On remand, EICON may renew its motion to dismiss with the district court.

This court has held that dismissal of a petition for judicial review is not mandatory when the petitioner fails to name an indispensable party.⁵ In Civil Service Commission v. District Court, we observed that “[f]iling requirements are mandatory and jurisdictional; however, technical derelictions do not generally preclude a party’s right to review.”⁶

In Checker Cab Co. v. State Taxicab Authority, this court considered whether a district court properly dismissed the petition for judicial review filed by a taxi company that was not permitted to participate in a hearing before the Taxicab Authority.⁷ Noting that “[a]ll presumptions are in favor of a right to judicial review for those who are injured in fact by agency action[,]”⁸ this court held that “[w]here a procedural dereliction, as in this case, is relatively unimportant, and the

⁴Pacific States Sec. Co. v. District Court, 48 Nev. 53, 60, 226 P. 1106, 1108 (1924) (“Parties are those who are named as such in the record, and who are properly served with process, or enter their appearance.”).

⁵Civil Serv. Comm’n, 118 Nev. at 190, 42 P.3d at 271.

⁶Id. at 189-90, 42 P.3d at 271 (citation omitted). See also Bing Constr. v. State, Dep’t of Taxation, 107 Nev. 630, 632, 817 P.2d 710, 711 (1991) (“When a document is received in a timely manner, in substantially the correct form, the party should not be precluded from a right of review.”).

⁷97 Nev. 5, 621 P.2d 496 (1981).

⁸Id. at 8, 621 P.2d at 498.

rights of other parties to the agency proceeding are not prejudiced, substantial compliance with procedural requirements is adequate.”⁹

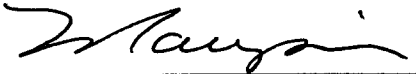
The “good cause” showing by Co Linx was arguably weak. The only appropriate “good cause” consideration even mentioned in Co Linx’s pleadings to this court or to the district court was that there was no prejudice to the other parties. Additionally, the factor of the other parties’ knowledge of the existence of the action also militates in favor of Co Linx, since the appeals office did receive service of EICON’s notice of intent to participate that mentioned the petition. Thus, there was at least some evidence of “good cause” considerations, however inartfully pleaded by Co Linx. The record supports the conclusion that none of the other parties to the action were prejudiced by the service error; in fact, it appears the only prejudice that has resulted from Co Linx’s error has been to Co Linx. Additionally, Co Linx is correct when it argues that, essentially, the only reason to include the appeals office in the service of petitions for judicial review is to provide for the transmittal of the record for review to the district court.

Based on the above, and in light of this court’s holding in Checker Cab that all presumptions in such cases should be made in favor of an aggrieved party’s right to judicial review, this court concludes that Co Linx made a sufficient showing of good cause to have its petition heard

⁹Id. at 9, 621 P.2d at 498.

on the merits. Thus, we also conclude that the district court abused its discretion in dismissing the petition for judicial review. Accordingly, we

REVERSE the order of the district court AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. William A. Maddox, District Judge
Santoro, Driggs, Walch, Kearney, Johnson & Thompson
Beckett & Yott, Ltd./Carson City
Nevada Attorney for Injured Workers/Carson City
Piscevich & Fenner
Reno Truss, Inc.
Carson City Clerk