

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL W. CRIPPS,
Appellant,
vs.
DONNA M. BATH, WHITE PINE
COUNTY CLERK,
Respondent.

No. 44551

FILED

DEC 20 2005

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment, entered in favor of respondent, on a complaint for the removal of respondent from public office. Seventh Judicial District Court, White Pine County; Carl J. Christensen, Judge.

On November 5, 2004, proper person appellant Michael W. Cripps filed a "presentment and complaint" in the district court, seeking the removal of respondent White Pine County Clerk Donna M. Bath from public office under NRS 283.440. The district court held a hearing on the matter on November 24, 2004, which Cripps, Bath, and Bath's counsel attended.

Ultimately, on December 13, 2004, the district court rendered judgment in favor of Bath. In addition, as Bath had requested, the district court concluded that Cripps was an "offender" under NRS 209.451(1)(d), and therefore subject to the forfeiture of deductions in time of his prison sentence. Cripps timely appealed from the district court's judgment, and Bath timely filed a response addressing the district court's "offender" determination, as directed.

We have considered each of the fourteen appellate concerns addressed by Cripps:

(1) that the district court violated NRS 283.440(2) when it failed to issue, within five to ten days of the date his complaint was filed, the order setting a hearing on this matter;

(2) that he was not provided reasonable time to prepare for the hearing (and therefore, that the court should have granted his oral request for a continuance);

(3) that Bath's failure to timely notify him of the November 24 hearing constitutes yet another instance of Bath's malfeasance in office;

(4) that the district court improperly refused to rule on his motion to proceed in forma pauperis, which was attached to his NRS 283.440 complaint, but which contained a caption relating to another case;

(5) that his case was prejudiced when the clerk's office failed to issue the twelve subpoenas that he had requested in his complaint;

(6) that the district court erred when it determined that he was not entitled to copies of documents in his criminal case free of charge, simply because he was not proceeding in proper person, but represented by an attorney in that case;

(7) that the district court's conclusion that Bath had not wrongfully assigned Case No. WM-0405002 to Judge Pavlikowski was in error, because the petition was filed on May 3 and dismissed on May 4, 2004 (the point being that there had been insufficient time for the other Seventh District judges to disqualify themselves and an administrative order issued, such that Bath must have given the petition to Judge Pavlikowski herself), and because Cripps had not, as the district court stated, raised the issue of the petition at his May 4 sentencing hearing;

(8) that the district court wrongfully based its conclusion that Bath had not refused to file a notice of appeal in Case No. WM-0406062 on the fact that a notice of appeal was filed on June 16, 2004, because Cripps

had previously attempted to file a notice of appeal on June 14, 2004, but was not permitted to do so and was asked to pay a filing fee;

(9) that the district court erred when it determined that Bath had not failed to file a “true and correct copy” of a complaint because the complaint Cripps left with Judge Papez contained the required verification and the courtesy copy left with the clerk’s office, and ultimately filed, did not;

(10) that the district court abused its discretion in refusing to allow him to present evidence that Bath gave him a receipt for paying the \$116 district court filing fee without having recorded the case title or number, and therefore when it ruled that Bath had not violated NRS 3.270;

(11) that the district court erred in determining that Cripps’ allegation that Bath’s deputy clerk failed to file a case appeal statement in CR-0306038 was unsupportable, just because his attorney had filed a notice of appeal from the final judgment;

(12) that the district court erred in ruling that actions of Judge Pavlikowski cannot form the basis of a complaint against Bath because they acted in collusion to deprive Cripps of his constitutional rights, which is a form of malfeasance/malpractice under NRS 283.440;

(13) that the district court abused its discretion in finding that evidentiary support is unavailable and in refusing to grant a continuance due to lack of notice; and

(14) that the district court abused its discretion when it found that Cripps had violated NRS 209.451.

NRS 283.440, in pertinent part, provides:

Removal of certain public officers for malfeasance or nonfeasance: Procedure; appeal.

1. Any person now holding or who shall hereafter hold any office in this state, except a justice or judge of the court system, who refuses or neglects to perform any official act in the manner and form prescribed by law, or who is guilty of any malpractice or malfeasance in office, may be removed therefrom as hereinafter prescribed in this section.

2. Whenever a complaint in writing, duly verified by the oath of any complainant, is presented to the district court alleging that any officer within the jurisdiction of the court:

(a) Has been guilty of charging and collecting any illegal fees for services rendered or to be rendered in his office;

(b) Has refused or neglected to perform the official duties pertaining to his office as prescribed by law; or

(c) Has been guilty of any malpractice or malfeasance in office,

the court shall cite the party charged to appear before it on a certain day, not more than 10 days or less than 5 days from the day when the complaint was presented. On that day, or some subsequent day not more than 20 days from that on which the complaint was presented, the court, in a summary manner, shall proceed to hear the complaint and evidence offered by the party complained of. If, on the hearing, it appears that the charge or charges of the complaint are sustained, the court shall enter a decree that the party complained of shall be deprived of his office.

In summary removal proceedings, "[m]atters of proof, matters of defense, questions as to whether the drastic remedy, in summary

proceedings, of removing from office an official elected by the people for a fixed term, should be adjudged—all these are for the trial judge,” who must determine whether the “proof of the accusations . . . exceed[s] a reasonable doubt.”¹ As we emphasized in Jones v. District Court,² a removal from office under a summary proceeding “is an extreme and extraordinary measure, intended only for extreme and extraordinary occasions.”

With regard to Cripps’ procedural concerns, we note that, based on the face of his complaint, he was aware, when he filed the complaint, of the twenty-day timeframe in which the court was to hold a hearing. The hearing was held within the allotted timeframe. Accordingly, even if the order setting the hearing or any other notice was untimely, Cripps was not aggrieved by any violation of NRS 283.440(2).³ Likewise, the district court did not abuse its discretion in refusing to continue the hearing date.⁴

Further, NRS 283.440(2) provides that removal proceedings are to be heard in a summary manner: the court is to “hear the complaint

¹Jones v. District Court, 67 Nev. 404, 417-18, 219 P.2d 1055, 1062 (1950) (citing Ex Parte Jones and Gregory, 41 Nev. 523, 532-33, 173 P. 885, 888 (1918 (McCarran, C.J. concurring))).

²Id. at 418, 219 P.2d at 1062.

³Cf. Trent v. State ex rel. Smith, 259 S.W.2d 657, 660 (Tenn. 1953) (recognizing, on an assignment of error regarding a summary removal proceeding, that “the question here is not whether such . . . hearing was irregular, but whether, as a result of such irregularity, the Defendant suffered prejudice”).

⁴See Baer v. Amos J. Walker, Inc., 85 Nev. 219, 220, 452 P.2d 916, 916 (1969) (recognizing that requests to continue a district court proceeding are addressed to the district court’s discretion).

and evidence offered by the party complained of,” (emphasis added). The court did not refuse to hear the evidence offered by the party complained of in this case, or to consider evidence previously offered by Cripps. And none of the evidence that Cripps has indicated that he would have been able to provide, had he been permitted to do so at a later date, would have supported removing Bath from office. Finally, we note that Cripps’ alleged financial condition did not render him unable to prosecute the action. Therefore, the district court did not abuse its discretion regarding Cripps’ evidentiary and in forma pauperis requests.

With regard to the remainder of Cripps’ concerns about the removal proceeding, we conclude that, even if true, the acts complained of constitute isolated incidents, interpretations of arguably ambiguous statutes or rules, conduct properly carried out under court direction, or inapplicable events. Therefore, the district court did not abuse its discretion when it determined that those acts do not constitute “extreme and extraordinary occasions” sufficing to remove Bath from office under NRS 283.440.⁵

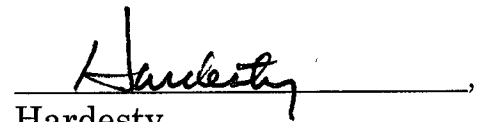
⁵See Kemp v. Boyd, 275 S.E.2d 297, 307 (W. Va. 1981) (recognizing that “where removal proceedings against a layman public officer on charges of malfeasance in office arise from his erroneous interpretation of a statute which has never before been interpreted and ambiguity exists in the statute such that it is capable of being understood by reasonably well-informed persons in more than one sense, removal from office can be a more drastic remedy than the offense calls for.”); Bowman v. District Court, 102 Nev. 474, 478, 728 P.2d 433, 435 (1986) (recognizing that “[t]he power to make any decision concerning the propriety of any paper submitted, or the right of a person to file a paper, is vested in the court, not the clerk,” and that the clerk should follow “specific instructions from the court”).

Finally, regarding the court's "offender" determination under NRS 209.451(1)(d), which subjected Cripps to the potential forfeiture of earned deductions of time, we note that, according to respondents, no deductions of time were forfeited. Further, Cripps has been released on parole and his sentence will soon expire. As a result, this court is unable to afford Cripps any relief regarding the court's determination, and this issue is therefore moot.⁶ Accordingly, we affirm the district court's judgment.

It is so ORDERED.

 J.
Maupin

 J.
Gibbons

 J.
Hardesty

cc: Hon. Carl J. Christensen, Senior Judge
Michael W. Cripps
Erickson Thorpe & Swainston, Ltd.
White Pine County Clerk

⁶See University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) (recognizing that this court may not "give opinions upon moot questions or abstract propositions" (quoting NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981))).