

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEPHEN FERRARO,
Appellant,
vs.
STATE OF NEVADA, DEPARTMENT
OF AGRICULTURE; AND STATE OF
NEVADA DEPARTMENT OF
ADMINISTRATION,
Respondents.

No. 79851-COA

FILED

OCT 21 2020

ELIZABETH BROWN
CLERK OF APPEALS COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER VACATING JUDGMENT AND REMANDING IN PART AND
AFFIRMING IN PART*

Stephen Ferraro appeals from a district court final judgment in an employment and tort action. Sixth Judicial District Court, Humboldt County; Jim C. Shirley, Judge.

Stephen Ferraro worked as a brand inspector for the Nevada Department of Agriculture (NDA) until NDA terminated his employment in 2013 for falsifying brand certificates.¹ A brand inspection certificate displays proof of ownership over livestock, and a brand inspector must ensure that the brand inspection certificates accurately reflect a livestock's owner as it is registered in Nevada. NDA discovered that Ferraro falsified three brand inspection certificates, causing cattle to be sold without the legal owners' consent and terminated Ferraro's employment.

Ferraro challenged his termination through an administrative hearing, which ultimately found that NDA presented sufficient evidence to terminate Ferraro for violating various statutes governing brand inspection. Ferraro appealed the administrative determination through a

¹We do not recount the facts except as necessary to our disposition.

petition for judicial review in district court, which he coupled with a civil complaint. His civil complaint asserted six claims for relief arising from his termination: (1) Petition for Judicial Review; (2) Back Pay While on Administrative Leave with Pay; (3) Elder Abuse; (4) Defamation; (5) Age Discrimination; (6) Attorney's Fees and Costs. The district court initially evaluated both the petition and the civil claims in the same case. However, it later bifurcated the two actions and allowed the remaining civil claims to continue through discovery. This appeal involves only the civil claims.

In the civil case, the district court granted summary judgment against all of Ferraro's claims and included extensive findings and conclusions. It found that Ferraro's claims were already litigated in the administrative hearing, that Ferraro failed to produce evidence sufficient to raise genuine issues of material fact, and that several of his claims failed as a matter of law. Ferraro now appeals.

We vacate and remand in part because the district court lacked subject matter jurisdiction to consider some of the claims asserted in the civil complaint, namely the claims titled (1) Petition for Judicial Review; (2) Back Pay While on Administrative Leave with Pay; (3) Elder Abuse; (4) Defamation; and (6) Attorney's Fees and Costs. Subject matter jurisdiction is a question of law subject to de novo review. *Ogawa v. Ogawa*, 125 Nev. 660, 667-68, 221 P.3d 699, 704 (2009). A party may raise subject matter jurisdiction at any time, and a reviewing court can raise it sua sponte. *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990). A party seeking judicial review of an administrative decision must strictly comply with statutory requirements for a reviewing court to have jurisdiction over the matter. *Kame v. Emp't Sec. Dep't*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989).

A reviewing court must dismiss an appeal for a party's noncompliance with statutory requirements, as those requirements are mandatory. *Id.*

Under the Nevada Administrative Procedure Act (APA), the Legislature established "minimum procedural requirements for the regulation-making and adjudication procedure of all agencies . . . and for judicial review of both functions." NRS 233B.020(1). Accordingly, an aggrieved party may file a petition for judicial review after an administrative agency makes a final decision. *See* NRS 233B.130(1)-(2).

The Legislature previously employed language that allowed a party to file separate civil causes of action by allowing a "trial de novo" following an agency's final decision. *See* 1989 Nev. Stat., ch. 716, § 6, at 1651. However, the Legislature subsequently removed that language and replaced it with NRS 233B.130(6), which instead designates a petition for judicial review as the sole remedy after a final agency decision. *S. Cal. Edison v. First Judicial Dist. Court*, 127 Nev. 276, 282-83, 255 P.3d 231, 235 (2011); NRS 233B.130(6). Additionally, the absence of a private cause of action provision within the statutory scheme strongly suggests that the Legislature did not intend for parties to raise private causes of action. *Richardson Constr., Inc. v. Clark Cty. School Dist.*, 123 Nev. 61, 65, 156 P.3d 21, 23 (2007) (holding that the court will not read additional remedies into a statute that only allows for a petition for judicial review). Nevada courts have consistently held that the APA does not allow for private causes of action separate from the petition for judicial review. *See, e.g., Zenor v. State, Dep't of Transp.*, 134 Nev. 109, 109, 412 P.3d 28, 29 (2018) (dismissing claims for attorney's fees because NRS Chapter 233B only allows for petitions for judicial review); *Déjà Vu Showgirls of Las Vegas, LLC v. State, Dep't of Taxation*, 130 Nev. 711, 715-16, 334 P.3d 387, 390 (2014) (affirming

district court's decision to dismiss a civil complaint based on lack of subject matter jurisdiction because NRS Chapter 233B's sole remedy is a petition for judicial review); *Crane v. Cont'l Tel. Co. of Cal.*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989) (concluding that the district court properly dismissed appellant's complaint because his arguments should have been raised in a petition for judicial review).²

Policy considerations drove the Legislature to designate judicial review as the sole remedy. Judicial review expedites an administrative case through the judicial system by minimizing the court's intrusion into administrative functions and relieving the district court of the burden and expense of trying the administrative case as an original matter. Brian Chally, *The Basics of Nevada Administrative Law*, 55-Jul Inter Alia 19, 23-24 (1990). A civil complaint that re-litigates the same issues raised before an administrative hearing officer would upset the administrative officer's specialized experience and "relegate the [administrative] hearing to a meaningless, formal, preliminary." *Nev. Tax Comm'n v. Hicks*, 73 Nev. 115, 123, 310 P.2d 852, 856 (1957), *superseded on other grounds by statute*, NRS 463.315, *as recognized in M&R Inv. Co. v. Nev. Gaming Comm'n*, 93 Nev. 35, 35, 559 P.2d 829, 830 (1977).

Here, we vacate and remand in part because the district court lacked subject matter jurisdiction over several of the claims asserted in Ferraro's civil complaint because they seek to re-litigate matters already decided in the administrative proceeding. Claim 1, titled "Petition for

²See also *Sun City Summerlin Cmty. Ass'n, Inc. v. Clark Cty.*, Docket Nos. 75914, 76791 (Order of Affirmance, Oct. 31, 2019) ("We need not reach Sun City's arguments related to the district court's denial of its motion to vacate because the district court had no jurisdiction to entertain that motion. See NRS 233B.130(6).").

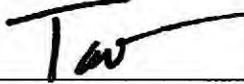
Judicial Review,” does this quite expressly. Claim 2, titled “Back Pay While on Administrative Leave With Pay,” asserts that the administrative proceeding reached the wrong conclusion and he should not have been terminated and therefore deserves administrative leave pay, which is an attempt to re-litigate the administrative proceedings. Claim 3, titled “Elder Abuse,” asserts that he was abused because he was not paid when he was wrongly terminated and seeks, as relief, the same administrative leave pay sought in Claim 2 to which he would have been entitled had he not been terminated. This is nothing more than an attempt to challenge the outcome of the administrative proceeding. Claim 4, titled “Defamation,” asserts that the NDA filled out form NPD-41 in such a way that it contained false and defamatory statements, but NPD-41 is a form required by law in an administrative proceeding. *See* NAC 284.656(3)(c). Further, those statements can be false and defamatory only if one accepts that Ferraro did not commit the conduct that triggered his termination and, therefore, that the administrative proceeding was wrong in deciding that he did, which constitutes an attempt to simply re-litigate the outcome of the administrative proceeding. Claim 6, titled “Attorney’s Fees and Costs,” asserts that Ferraro is entitled to fees and costs because he was wrongly terminated and the administrative proceeding reached the wrong conclusion. The APA’s plain language, its legislative history, and our review indicate that the Legislature intended for the petition for judicial review to be the sole remedy for an aggrieved party to challenge an administrative agency’s final decision on a matter. The district court therefore lacked subject matter jurisdiction to consider these portions of the civil complaint that are grounded in his termination.

As to Claim 5, titled "Age Discrimination," the district court possessed jurisdiction to consider its merits because it does not directly attempt to re-litigate the same matters already decided during the administrative proceeding. However, the district court correctly entered summary judgment on this claim because Ferraro failed to first exhaust his administrative remedies by submitting it for adjudication to the Nevada Equal Rights Commission (NERC) as required by NRS 613.420. *See Palmer v. State*, 105 Nev. 151, 154, 878 P.2d 803, 804 (1990). We therefore affirm the district court's entry of summary judgment against Ferraro on Claim 5.

Therefore, we

ORDER the judgment of the district court VACATED IN PART and AFFIRMED IN PART and REMAND this matter to the district court for proceedings to dismiss the claims that it lacked jurisdiction over.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Smith & Harmer
Attorney General/Reno
Humboldt County Clerk