

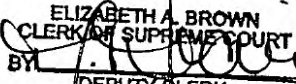
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AS'AD MARJI,  
Appellant,  
vs.  
NEVADA TRANSPORTATION  
AUTHORITY,  
Respondent.

No. 85217-COA

**FILED**

**AUG 16 2023**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

As'ad Marji appeals a district court order dismissing a petition for judicial review in an administrative law matter and the denial of his petition for rehearing. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Enforcement staff officers of the Nevada Transportation Authority (NTA) investigated 2 Drink LLC, for allegedly providing illegal passenger transportation from Las Vegas Strip hotels to various gentlemen's clubs.<sup>1</sup> The investigation revealed that 2 Drink was providing illegal transportation in violation of NRS 706.386.<sup>2</sup> The investigation also revealed that 2 Drink provided illegal transportation in part by utilizing vehicles that were personally owned by Marji, which were found parked outside his Las Vegas home alongside other vehicles that were registered to 2 Drink. Lastly, the NTA stopped several of the vehicles dispatched by 2 Drink and spoke with the drivers who confirmed Marji was the owner of 2 Drink.

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<sup>1</sup>We recount the facts only as necessary for our disposition.

<sup>2</sup>NRS 706.386(1) requires individuals to obtain a certificate of public convenience and necessity before operating as a carrier of intrastate commerce.

The vehicles used in the illegal transportation were eventually impounded, and the NTA issued five citations to 2 Drink and Marji for operating as a motor carrier without a certificate of public convenience and necessity issued by the NTA. On each citation, 2 Drink and Marji were named as co-respondents. The NTA served each citation on Marji's attorney, who also accepted service of the citations on behalf of 2 Drink.

In February 2020, an NTA hearing officer held a hearing on the five citations as to Marji and 2 Drink. Marji's counsel appeared on behalf of Marji only and confirmed that he accepted service of the citations on behalf of 2 Drink.<sup>3</sup> However, counsel also stated that he no longer represented 2 Drink and had only been retained to represent the company at the hearing for the impounded vehicles. Thus, because no one appeared on its behalf, a failure to appear was entered as to 2 Drink. The NTA recommended a fine of \$10,000 for each violation against 2 Drink, totaling \$50,000. The hearing officer adopted the recommendation and imposed the fines accordingly. Notably, at this hearing, the deputy attorney general, who appeared on behalf of the NTA, requested to "bifurcate" the proceedings as to Marji and 2 Drink. The NTA asked the hearing officer to continue the hearings as to the five citations against Marji until a later date. Marji agreed, indicating negotiations were being pursued.

The proceedings were bifurcated, and a hearing on the citations against Marji was held in April 2021. During this hearing, the NTA presented evidence showing that Marji hired drivers to provide illegal transportation, that the drivers who were stopped during the NTA's investigation stated they worked for Marji, and that the drivers stated

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<sup>3</sup>No other parties made an appearance nor were involved in the subsequent proceedings related to Marji.

Marji paid them. Three investigating officers testified that at least six divers who were stopped for providing illegal transportation admitted they worked for Marji and that Marji owned 2 Drink. Marji denied that he was the owner of 2 Drink at the time of the violations and maintained that he did not provide illegal rides. The hearing officer nevertheless found that Marji had committed each of the alleged offenses. NTA requested fines of \$10,000 for each of the five violations, for a total of \$50,000, against Marji and apparently separate from the fines assessed against 2 Drink. The hearing officer accepted and imposed the recommended fines. Following the hearing, the NTA issued a written order.

Marji filed for reconsideration of this order, but before Marji's request for reconsideration could be heard, the hearing officer issued an amended order regarding Marji's violations. The amended order found that Marji's testimony was not credible and concluded that Marji's violations were affirmed. The amended order also stated that it was amending the NTA's previous order relative to 2 Drink, from August 2020, to add Marji as the owner of 2 Drink. The amended order also made Marji jointly and severally liable for the \$50,000 in administrative fines assessed against 2 Drink. Marji filed for reconsideration of the amended order, which was denied.

Marji then filed a petition for judicial review (PJR), challenging the NTA's amended order. However, Marji did not name 2 Drink as a party in his PJR. Only Marji and the NTA were named as parties.

The NTA filed a motion to dismiss Marji's PJR. The NTA's motion to dismiss alleged that Marji failed to comply with the Nevada Administrative Procedure Act (APA), which mandates strict compliance with procedural requirements as a prerequisite for the district court's

jurisdiction. Specifically, NTA argued that Marji failed to properly and timely identify and serve 2 Drink as a party in his PJR, as required in NRS 233B.130(2)(a) and (d). The NTA's motion also argued it was "understandable why Marji would not name 2 Drink in this proceeding and then serve the PJR on himself as the actual owner of 2 Drink." The NTA contended Marji's omission of 2 Drink as a party in his PJR was intentionally done to avoid admitting that he was the owner of the company.

Marji filed an opposition to the NTA's motion to dismiss, arguing that 2 Drink was not a named party to the proceedings as evidenced by the caption appearing in the order, which did not name 2 Drink as a party. Marji also highlighted that 2 Drink was absent from his separate proceedings before the hearing officer, and 2 Drink never requested to be heard or to contest the citations at the hearing.

The district court granted the NTA's motion to dismiss Marji's PJR. The order found that Marji indisputably failed to name and serve 2 Drink in his PJR and that 2 Drink was clearly a co-respondent to the NTA's associated administrative citations. The order also found that Marji's decision "to not name, serve, or otherwise include 2 Drink, as a party, was intentional—to avoid affirming that [Marji] indeed owns 2 Drink." Lastly, the district court found that Marji failed to provide any showing of good cause related to why he did not name 2 Drink in his PJR.

Marji filed a motion for reconsideration of the district court's order dismissing his PJR. The NTA opposed, and Marji replied. The district court denied Marji's motion for reconsideration, and in its order, it found that Marji had not presented any new law, facts, or evidence. The order reiterated the mandatory jurisdictional requirements of NRS 233B.130(2)(a), noting that the administrative record demonstrated that



Marji clearly should have included 2 Drink as a party yet failed to do so. The district court concluded that Marji's PJR was properly dismissed based on his failure to name, serve, or otherwise include 2 Drink as a party. Marji appealed.

On appeal, Marji raises two issues. He argues that he was not required to name 2 Drink as a party of record in his PJR because he and 2 Drink had two separate and independent hearings, decisions, and orders. Thus, he argues that the district court erred in dismissing his PJR for failure to name 2 Drink as a party of record in his PJR. Further he argues the district court abused its discretion when it denied his motion for reconsideration. We disagree.

We review appeals from an order granting a motion to dismiss de novo. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). An appellate court reviews a district court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). When deciding on a motion for reconsideration, a district court may grant such a motion "if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). The primary statute affecting the outcome of this appeal is NRS 233B.130(2)(a), which requires that all parties of record to an administrative proceeding be named as a respondent to a PJR. Additionally, NRS 233B.035 defines a party to an administrative proceeding as "each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any contested case."

Petitioners must strictly comply with the APA's naming requirements before a district court can exercise jurisdiction over a PJR. *Washoe County v. Otto*, 128 Nev. 424, 426, 282 P.3d 719, 721 (2012). If a petitioner fails to name each party of record to the underlying administrative proceedings in its PJR, "the petition is jurisdictionally defective and must be dismissed." *Id.*

Marji and 2 Drink were connected as parties to the administrative proceedings from the time the NTA issued the five citations to each co-respondent. The February 2020 NTA hearing was originally scheduled to determine the liability and corresponding fines for the five citations as to Marji and 2 Drink. The NTA's investigation, along with the testimony from the investigating officers and their reports detailing statements from drivers hired by Marji, revealed that Marji was the owner of 2 Drink, even though he made repeated attempts to conceal his role as owner. However, Marji's counsel withdrew as 2 Drink's attorney at the February 2020 hearing, which resulted in a failure to appear order entered against 2 Drink.


Moreover, despite counsel's withdrawal as 2 Drink's attorney and the proceedings being bifurcated, Marji's case was not severed, nor was there a claim of misjoinder. The statements made by the deputy attorney general as to why the NTA was seeking bifurcation indicate that the NTA never intended to separate 2 Drink and Marji as parties in one case. The separate hearings indicate only that the NTA still had an additional investigation to perform into Marji's involvement, role, and connection to 2 Drink. The record also supports that the NTA sought the continuance in part because Marji was seemingly trying to negotiate a settlement with the NTA for the amount of the fines. Once it determined that Marji was

actually the owner of 2 Drink, the NTA accordingly pursued concurrent enforcement at Marji's hearing. The citations issued for Marji's violations and proceedings were identical to those issued against 2 Drink, and those citation numbers never changed.


Thus, Marji's argument on appeal is not supported by the record because the administrative record establishes that 2 Drink was a party of record that should have been named in Marji's PJR. The district court's dismissal of Marji's PJR was therefore correct. The district court's denial of Marji's motion for reconsideration of his PJR was not an abuse of discretion because the court's denial was properly based on Marji's failure to present any new law or evidence or show that the district court's decision to dismiss the PJR was clearly erroneous.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Ronald J. Israel, District Judge  
Lansford W. Levitt, Settlement Judge  
James S. Kent  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk