

SUPREME COURT OF NEVADA

Murray v. A Cab Taxi Service LLC

No. 82539 (Nev. Feb. 17, 2022) · No. 82539 · Decided February 17, 2022

SUMMARY

The Supreme Court of Nevada reversed and remanded a district court order denying taxi drivers' renewed motion to appoint a post-judgment receiver in a minimum-wage class action. The court held that the request for a receiver remained pending because earlier proceedings had not resulted in a final denial, and therefore the district court abused its discretion by declining to consider the motion on its merits. The court declined to address the factual merits of the receivership request in the first instance.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Justice Parraguirre; Justice Hardesty; Senior Justice Mark Gibbons
JURISDICTION	Nevada
DECIDED	February 17, 2022
DOCKET	82539
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a district court post-judgment order denying a motion to appoint a receiver in a class action.
STANDARD OF REVIEW	The appointment of a receiver is reviewed for abuse of discretion. The district court's factual findings are upheld unless clearly erroneous or unsupported by substantial evidence.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion
PARTIES	Michael Murray, Michael Reno, individually and on behalf of others similarly situated v. A Cab Taxi Service LLC, A Cab, LLC, Creighton J. Nady

TOPICS

[appellate jurisdiction](#) [motion for reconsideration](#) [civil procedure](#) [appellate procedure](#) [remedies](#)

PRACTICE AREAS

[civil procedure](#) [appellate procedure](#) [judgment enforcement](#) [receivership](#)

QUESTIONS PRESENTED

1. Whether the Nevada Supreme Court had appellate jurisdiction over an order that construed the appellants' motion as one for reconsideration but also expressly denied appointment of a receiver.
2. Whether the district court abused its discretion by treating the appellants' renewed receiver request as previously decided and refusing to consider it on the merits.
3. Whether the district court's prior orders had finally denied the request to appoint a receiver.

HOLDINGS

1. The Supreme Court of Nevada had jurisdiction under NRAP 3A(b)(4) because the district court's order expressly denied the request to appoint a receiver, even though the district court also construed the motion as one for reconsideration.
2. The district court abused its discretion by finding that the receiver request had already been brought and denied several times and by declining to consider the renewed motion on its merits.

KEY QUOTATIONS

“Thus appellants' request remained pending at the time they brought the motion underlying this appeal.” (at 3)

“Because appellants' request for a receiver was still pending, we conclude that the district court abused its discretion when it declined to consider the merits of appellants' motion.” (at 3)

FACTUAL BACKGROUND

The appellants were taxi drivers who secured a judgment against their former employer for failure to pay minimum wage. After encountering difficulties satisfying the judgment, they sought appointment of a post-judgment receiver. The district court denied the first request without prejudice and sought guidance from a special master, but the special master died before completing a later report. The appellants renewed the request, and the district court denied it without reaching the merits.

PROCEDURAL HISTORY

The appellants, taxi drivers who had obtained a minimum-wage judgment against A Cab, sought appointment of a post-judgment receiver to aid collection. The district court initially denied the request without prejudice and referred the issue to a special master; after a second special-master assignment was not completed, appellants renewed their request. The district court treated the renewed motion as an improper and untimely motion for reconsideration and denied it. The Nevada Supreme Court reversed and remanded for consideration of the receiver request on its merits.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must consider the appellants' request to appoint a receiver on the merits.

CASES CITED

- A Cab, LLC v. Murray, 137 Nev., Adv. Op. 84, P.3d (2021)
- Bowler v. Leonard, 70 Nev. 370, 383, 269 P.2d 833, 839 (1954)
- Weddell v. H2O, Inc., 128 Nev. 94, 101, 271 P.3d 743, 748 (2012)
- Murray v. A Cab Taxi Service LLC, No. 81641, 2020 WL 6585946, at *2 (Nev. Nov. 9, 2020) (Order Dismissing Appeal)
- Sicor, Inc. v. Sacks, 127 Nev. 896, 903, 266 P.3d 618, 623 (2011)
- Stoecklein v. Johnson Elec., Inc., 109 Nev. 268, 271, 849 P.2d 305, 308 (1993)
- Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc., 128 Nev. 289, 299, 279 P.3d 166, 172 (2012)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA MICHAEL MURRAY; AND MICHAEL No. 82539 RENO, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED, FILED Appellants, vs. FEB 1 7 2022 A CAB TAXI SERVICE LLC; A CAB, LLC; AND CREIGHTON J. NADY, Respondents. ORDER OF REVERSAL AND REMAND This is an appeal from a district court post-judgment order denying a motion to appoint a receiver in a class action.

Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge." Appellants are taxi drivers who secured a judgment against their former employer, respondent A Cab, LLC, for failing to pay them minimum wage. See A Cab, LLC v. Murray, 137 Nev., Adv. Op. 84, P.3d (2021). When appellants encountered difficulties satisfying the judgment, they moved the district court to appoint a post-judgment receiver.

The district court denied appellants first motion without prejudice and instead appointed a special master to submit a report as to whether appointing a receiver was feasible. The district court later ordered the special master to prepare a second report based on respondents' updated financials, but the special master passed away before completing this task or otherwise advising the district court.

Appellants then renewed their 'Pursuant to NRAP 34(0(4 we have determined that oral argument is not warranted. request for a receiver,2 while also seeking alternative relief to help secure their rights as judgment creditors.

The district court denied the motion, finding that it was untimely and improper under various local rules because appellant's request for a receiver had already been denied several times. As a preliminary matter, we first address respondents' contention that this court lacks jurisdiction over this appeal.

Although the district court construed appellants motion as one for reconsideration, its order also explicitly denied appellants' request to appoint a receiver. Accordingly, this court has jurisdiction pursuant to NRAP 3A(b)(4), which provides for an appeal from an order "refusing to appoint a receiver." Appellants argue that the district court abused its discretion in denying their motion by misconstruing it as a motion for reconsideration.

See *Bowler v. Leonard*, 70 Nev. 370, 383, 269 P.2d 833, 839 (1954) (providing that the decision to appoint a receiver is within the discretion of the district court). We agree. The district court's finding that appellants' motion had already been brought and denied several times was clearly erroneous.³ See *Weddell v. H2O, Inc.*, 128 Nev. 94, 101, 271 P.3d 743, 748 (2012) (explaining that this court will uphold the district court's factual findings unless clearly erroneous or not supported by substantial evidence).

Our review of the record reveals that appellants moved for the appointment of a receiver twice before their present request. The first time, the district court denied the 2At this time, a different judge had been assigned to preside over the case. the district court's finding that appellant& prior request for 3Notab1y, a receiver had been denied squarely conflicts with this court's prior order concluding that the district court had not denied appellants' request.

See *Murray v. A Cab Taxi Serv. LLC*, No. 81641, 2020 WL 6585946, at *2 (Nev. Nov. 9, 2020) (Order Dismissing Appeal). SUPREME COURT Of NEVADA 2 (0) 1947A request without prejudice and sent the issue to a special master.

Thus, the motion was not resolved at that time and appellants could renew their request at a later date. See *Sicor, Inc. v. Sacks*, 127 Nev. 896, 903, 266 P.3d 618, 623 (2011) (holding that a district court order denying a motion without prejudice "[did] not fully resolve the issues presented and contemplate[d] further action"). And the second time, in addition to the district court asking a special master to consider the issue, we concluded that the district court "neither granted nor denied [appellants] request to appoint a receivee when dismissing appellants appeal from that second order.

Murray v. A Cab Taxi Service LLC, No. 81641, 2020 WL 6585946, at *2 (Nev. Nov. 9, 2020) (Order Dismissing Appeal). Indeed, in both instances, the district court indicated that it would consider appointing a receiver but wanted guidance from a special master before making a final decision. And in both instances the district court did not receive the guidance it sought or enter a final order denying appellants' request.

Thus appellants' request remained pending at the time they brought the motion underlying this appeal. Because appellants' request for a receiver was still pending, we conclude that the district court abused its discretion when it declined to consider the merits of appellants' motion.⁴ We therefore reverse the district 4A1though EDCR 7.12 generally prohibits re-filing a pending

motion, district courts must balance this procedural rule with Nevada's policy of resolving cases on their merits.

See *Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 308 (1993) ("[T]he district court must consider the state's underlying basic policy of deciding a case on the merits whenever possible."). SUPREME COURT OF NEVADA 3 (01 1947A ADD court's order and remand this case for the district court to consider appellants request on the merits.⁵ It is so ORDERED.⁶ 4Parraguirre C244.4 j. / A6 A x0, J. Hardesty cc: Hon. Carli Lynn Kierny, District Judge Leon Greenberg Professional Corporation Hutchison & Steffen, LLC/Las Vegas Rodriguez Law Offices, P.C.

Cory Reade Dows & Shafer Eighth District Court Clerk ⁵Because reversal and remand is warranted for the district court to consider the merits of appellants' request, we decline, at this time, to consider their arguments regarding the facts they claim support their request to appoint a receiver. See *Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (An appellate court is not particularly well-suited to make factual determinations in the first instance.").

⁶The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment. SUPREME COURT OF NEVADA 4 (0) I447A c4Seto