

SUPREME COURT OF NEVADA

Mcsweeney-Wilson v. Storey County Commissioners; and Stericycle, Inc.

Mcsweeney-Wilson · No. No. 82806 · Decided February 17, 2022

SUMMARY

The Nevada Supreme Court affirmed dismissal of Mary Lou McSweeney-Wilson's petition for judicial review challenging Storey County's approval of Stericycle, Inc.'s special land use permit. The court held that Wilson lacked standing under NRS 278.3195(4) because she did not participate in or appeal the relevant proceedings and was not an aggrieved person, and it rejected her due process arguments.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Justice Parraguirre; Senior Justice Hardesty; Senior Justice Mark Gibbons, participating under a general order of assignment
JURISDICTION	Nevada
DECIDED	February 17, 2022
DOCKET	No. 82806
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court order dismissing a petition for judicial review of a county commission decision granting Stericycle, Inc. a special land use permit.
STANDARD OF REVIEW	De novo review of standing and an order granting a motion to dismiss.
PRECEDENTIAL VALUE	published
PARTIES	Mary Lou McSweeney-Wilson v. Storey County Commissioners, Stericycle, Inc.

TOPICS

judicial review of agency action zoning administrative law statutory interpretation due process

PRACTICE AREAS

administrative law land use appellate procedure constitutional law

QUESTIONS PRESENTED

1. Whether McSweeney-Wilson had standing under NRS 278.3195(4) to seek judicial review of the Storey County Commissioners' land use decision.
2. Whether Wilson should be excused from strictly complying with NRS 278.3195(4) because she was unaware of the meetings at which Stericycle's application was considered.
3. Whether the county's notice and meeting procedures deprived Wilson of due process.

HOLDINGS

1. A person may seek judicial review of a governing body's land use decision under NRS 278.3195(4) only if the person appealed a decision to the governing body in accordance with the applicable ordinance and is aggrieved by the governing body's decision. Wilson lacked standing because she did not participate in or appeal the relevant proceedings and did not show that she was aggrieved.
2. A party's alleged lack of awareness of the meetings concerning a land use application does not excuse strict compliance with NRS 278.3195(4)'s standing requirements.
3. Wilson's due process claim failed because she did not allege or demonstrate deprivation of a cognizable liberty or property interest.

KEY QUOTATIONS

“Under the plain language of NRS 278.3195, Wilson lacked standing to seek judicial review of the County Commissioners decision” (at 1)

FACTUAL BACKGROUND

The Storey County Commissioners granted Stericycle, Inc.'s application for a special land use permit. McSweeney-Wilson did not attend or participate in the planning commission or county commission meetings concerning the application and did not appeal the planning commission's recommendation that the application be approved. Her property was several miles outside the applicable notice zone, and she did not establish a cognizable liberty or property interest affected by the decision.

PROCEDURAL HISTORY

McSweeney-Wilson petitioned the district court for judicial review of the Storey County Commissioners' decision granting Stericycle's special land use permit. The district court allowed Stericycle to intervene and granted both respondents' motions to dismiss on the ground that Wilson lacked standing. The Supreme Court of Nevada reviewed the dismissal de novo and affirmed.

DISPOSITION

affirmed

CASES CITED

- *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011)

- Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008)
- Kay v. Nunez, 122 Nev. 1100, 1104, 1106, 146 P.3d 801, 805-06 (2006)
- City of N. Las Vegas v. Eighth Judicial Dist. Court, 122 Nev. 1197, 1206, 147 P.3d 1109, 1115 (2006)
- Malfitano v. Storey County, 133 Nev. 276, 282, 396 P.3d 815, 819-20 (2017)
- Pressler v. City of Reno, 118 Nev. 506, 510, 50 P.3d 1096, 1098 (2002)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA MARY LOU MCSWEENEY-WILSON, No. 82806 Appellant, vs. STOREY COUNTY COMMISSIONERS; FILED AND STERICYCLE, INC., FEB 17 2022 Res • onents. A. BROWN PRENIE DEPUY CLERK ORDER OF AFFIRMANCE This appeal challenges a district court order dismissing a petition for judicial review in a land use matter.

First Judicial District Court, Storey County; James Todd Russell, Judge.' Appellant Mary Lou McSweeney-Wilson filed a petition seeking judicial review of respondent Storey County Commissioners decision granting respondent Stericycle, Inc.'s application for a special land use permit.

The district court permitted Stericycle to intervene and later granted both respondents' motions to dismiss Wilson's petition because she lacked standing. Reviewing de novo, we affirm. See Arguello v. Sunset Station, Inc., 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (Standing is a question of law reviewed de novo."); Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (reviewing order granting a motion to dismiss de novo).

NRS 278.3195(4), which "governs a party's standing to 'Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted. SUPREME COURT OF NEVADA (01 I947A OA.. 1 challenge [a Commission]'s decision in the district court," Kay v. Nunez, 122 Nev. 1100, 1106, 146 P.3d 801, 806 (2006), provides that only a person who (a) Has appealed a decision to the governing body in accordance with an ordinance adopted pursuant to subsection 1; and (b) Is aggrieved by the decision of the governing body, may appeal that decision to the district court of the proper county by filing a petition for judicial review.....

Under the plain language of NRS 278.3195, Wilson lacked standing to seek judicial review of the County Commissioners decision because she did not attend or participate in any of the planning commission or County Commission meetings considering Stericycle's application and she did not appeal the planning commission's decision recommending that Stericycle's application be approved.

See Kay, 122 Nev. at 1104, 146 P.3d at 805 (NRS 278.3195(4) is clear and unambiguous, and thus, we follow its plain meaning."). Wilson also did not demonstrate that she was aggrieved by the County Commissioners' decision, as her property is several miles outside of the relevant notice zone.² See City of N. Las Vegas v. Eighth Judicial Dist. Court, 122 Nev. 1197, 1206, 147 P.3d 1109, 1115 (2006) (explaining that in counties with populations less than 400,000 (since this opinion was issued, the statute increased the population amount to 700,000), local ordinances govern the definition of who is aggrieved for purposes of NRS 278.3195); Storey County Code § 17.03.130 (outlining the 2 Similarly, Wilson's purported clients also failed to meet NRS 278.3195(4)s standing requirements.

Although both clients participated in the planning commission and County Commission meetings and opposed Stericycle's application, neither appealed the decisions nor demonstrated that they were aggrieved by the County Commissioners' decision. 2 procedure to appeal an administrative decision to the Storey County Commissioners and defining an aggrieved party with standing as "a person with a legal or equitable interest in the property affected by the final decision or the property located within the notice area of the property that is entitled by law to notice); see also NRS 278.315(3) (requiring notice of a hearing on an application for a special use permit be sent to all property owners "located within 300 feet of the property in question").

We also reject Wilson's argument that she should be excused from strictly complying with NRS 278.3195(4)s standing requirements because she was unaware of the meetings where Stericycle's application was considered. The County Commission demonstrated that it complied with the physical posting requirements of Nevada's Open Meeting Law despite those requirements being suspended by the governor's emergency directives relating to the COVID-19 pandemic.

And, because Wilson has not alleged that the County Commission's decision deprived her of a cognizable liberty or property interest, we reject her assertions that its decision deprived her of due process because the notices were not physically posted in their usual locations and there was no option to physically attend the meetings.³ See Malfitano v. Storey Cty., 133 Nev. 276, 282, 396 P.3d 815, 819-20 (2017) (explaining that the first step in evaluating a due process 3A1though Wilson argues that she showed the negative impacts of air pollution to satisfy having a liberty or property interest the decision deprived her of, she failed to demonstrate that she has a constitutionally protected property interest in her property being free from air pollution, and did not explain how her property has been negatively impacted by air pollution from Stericycle's operations under its special use permit.

See Pressler v. City of Reno, 118 Nev. 506, 510, 50 P.3d 1096, 1098 (2002) (The protections of due process only attach when there is a deprivation of a protected property or liberty interest."). SUPREME COURT OF NEVADA 3 (0) I947A claim is to determine whether there has been an interference with a liberty or property interest).

For the foregoing reasons, we ORDER the judgment of the district court AFFIRMED.⁴
pNrraguirre., J. Sr.J. Hardesty cc: Hon. James Todd Russell, District Judge J. Douglas Clark,
Settlement Judge Mary Lou Wilson McDonald Carano LLP/Reno Storey County District Attorney
Storey County Clerk ⁴The Honorable Mark Gibbons, Senior Justice, participated in the decision of
this matter under a general order of assignment.

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