

Caballero v. Dist. Ct., 123 Nev. Adv. Op. No. 34 (September 20, 2007)¹

CIVIL (SMALL CLAIMS) – APPOINTED INTERPRETER

Summary

Petitioner Caballero didn't speak English and wanted an interpreter for his small claims proceedings. The justice court denied his request on the ground that he wasn't disabled under NRS 50.050.² The Supreme Court held that the justice court had an inherent power to allow a volunteer interpreter or appoint one in the alternative if justice demands it. Further, the Supreme Court held that the justice court had an express power of appointment under JCRCP 43(f).³ The Supreme Court therefore issued a writ of mandamus ordering the district court's order vacated and remanding the issue to justice court for consideration.

Disposition/Outcome

“Because the district court erroneously concluded that the justice court lacked authority to appoint an interpreter in the underlying small claims proceeding and did not address the justice court's failure to determine if a volunteer interpreter was available, the petition was granted.”

Factual and Procedural History

Petitioner Cabellero, who does not speak English, was taken from an Arizona prison to Nevada's Ely State Prison. He was informed by Nevada prison employees that certain personal property would be mailed to him. Upon arrival, he sought out his possessions, and was informed that they had been lost. Petitioner filed in forma pauperis and a proper person small claims action in White Pine County Justice Court, Ely Township. Justice court concluded it lacked authority to appoint an interpreter and dismissed the action. district court affirmed the dismissal. Petitioner filed an original proper person writ petition in the Nevada Supreme Court.

Discussion

Though Petitioner submitted a petition for writ of certiorari, he actually seeks mandamus relief. Therefore, this case will be treated as such. It is within the court's discretion to consider mandamus relief. Mandamus compels performance of an act that the law requires, or controls a manifest abuse or arbitrary or capricious exercise of discretion. Mandamus will not issue where a plain, speedy, and adequate legal remedy is available. As Petitioner has no right of appeal to this court and may seek relief only through a writ petition, the petition is proper.

¹ By Jerald Van Rhyn.

² Nev. Rev. Stat. § 50.050 (2005).

³ Justice Court Rules of Civil Procedure 43(f) (2006).

NRS 50.050 only requires an interpreter for a person who is disabled in that he is either deaf, mute, or has a physical speaking impairment, cannot readily understand or communicate in the English language or cannot understand the proceedings. Because Petitioner is not precluded from speaking or understanding English due to some physical impairment, the plain language supports the court's conclusion that Caballero is not entitled to an interpreter under NRS 50.050.

However, the justice court had discretion, under both its inherent and express authority, to appoint an interpreter in small claims court. The California Court of Appeal in *Gardiana v. Small Claims Court In & For San Leandro-Hayward, Etcetera* determined that courts have inherent power to appoint interpreters when the administration of justice so requires. The court in *Gardiana* stated that an interpreter could be an uncompensated volunteer or the court could appoint a certified interpreter free of charge under its inherent power. The *Gardiana* court noted that any other conclusion would restrict the access of indigents to the courts.

Further, under JCRCP 43(f) justice courts may "appoint an interpreter of its own selection and [to] fix the interpreter's reasonable compensation."

Since the non-English speaking population of Nevada is and will continue to increase, the courts have a duty to oversee the proceedings of such litigants with fairness. The ability to communicate orally is essential to small claims proceedings.

The considerations for how to appoint an interpreter are: 1) the party's knowledge of and ability to communicate in English; 2) whether a competent volunteer interpreter is available; and 3) if a volunteer interpreter is not available, whether a state-registered interpreter is needed to ensure that the proceedings are meaningful.

An interpreter is needed when the party cannot meaningfully participate in the proceedings. The court should encourage the party to secure a competent volunteer interpreter. In the absence of such, the court may then appoint an interpreter. In the case of indigent parties, the interpreter may be compensated from public funds when necessary.

Conclusion

While the district court properly determined that Cabellero is not disabled under NRS 50.050(1)(b) his entitlement to an interpreter is derived from the inherent and express powers of the justice court. In appropriate circumstances, and within its discretion, a justice court is authorized to allow a volunteer interpreter. If a volunteer interpreter is not available, a justice court may appoint a state-registered interpreter and determine any compensation.