IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID E. ST. PIERRE,
Appellant,
vs.
THE STATE OF NEVADA; NEVADA DEPARTMENT OF CORRECTIONS,
Respondents.

No. 43386

FILED

OCT 19 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING AND REMANDING

This is a proper person appeal from a district court order that dismissed a petition for a writ of mandamus. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

As an initial matter, this court directed respondents to file and serve a response by August 5, 2006. This court subsequently granted an extension of time to respond, pursuant to respondents' request. Respondents have filed another motion for an extension of time to file their response, to which they attached their response. We grant the request and direct the clerk of this court to file respondents' response received on September 22, 2006.[1]

Turning to the substance of this appeal, appellant's inmate trust account was purportedly charged for appellant's medical care and treatment at Ely State Prison. Seeking the return of these funds, appellant instituted the underlying action for extraordinary, declaratory, and injunctive relief. The district court subsequently entered an order dismissing the action, noting that, because appellant's claims concerning

[1]We therefore deny appellant's "Motion for Submission and for Review" and "Motion for Default Decision and Appeal Expenses."

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the money were "litigated [in the justice's court] and dismissed by [the district court] on appeal," the action was frivolous. The district court's order further noted that the underlying action was merely one of eight actions that appellant had filed in the district court. Consequently, in addition to dismissing appellant's action, in light of appellant's decidedly vexatious and repetitive litigation, the district court's order imposed a court-access restriction on appellant. This timely appeal followed.[2]

Although the order being appealed also dismissed appellant's action, appellant has limited his appellate concerns to the court-access restriction and does not challenge the dismissal of his action.[3] Accordingly, before addressing appellant's challenge to the court-access restriction imposed on him, we affirm the district court's order to the extent that it dismissed the underlying action.

Regarding the portion of the district court's order restricting appellant's access to the court, the district court specifically prohibited appellant from filing anything further in the district court without the

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[2]According to respondents, because appellant filed his notice of appeal more than 30 days after the district court's order was filed and served, his appeal is untimely and thus failed to vest jurisdiction in this court to consider it. A notice of appeal, however, must be filed within 30 days after service of written notice of the district court order's entry. Here, as written notice of the order's entry was apparently never served, the time to file the notice of appeal never commenced. This appeal is therefore timely and within our jurisdiction to resolve. See Matter of Application of Duong, 118 Nev. 920, 921, 59 P.3d 1210, 1211 (2002) (noting that the time period within which to appeal runs from written notice of the order's entry, not service of the order).

[3]See St. Pierre v. State, Docket No. 43386 (Order Granting Motions and Directing Response, July 5, 2006).

court's prior permission. On review, we examine this part of the order for an abuse of discretion.[4]

In Jordan v. State, Department of Motor Vehicles, this court adopted a four-factor analysis to determine whether a court-access restriction comported with the implicated due process protections.[5] In particular—and dispositively, here—this court noted that when imposing a restrictive order, "the litigant must be provided reasonable notice of and an opportunity to oppose the restrictive order's issuance."[6]

Here, although the district court adequately supported its findings regarding appellant's improper filings, stating, for example, that "[appellant] has been warned that he must desist from filing further voluminous [actions] that are without merit," the record reveals that the district court never unequivocally warned appellant that it was considering imposing a court-access restriction on him.[7] And because the district court did not provide appellant with adequate notice that his court access would be restricted, appellant was concomitantly denied an opportunity to respond to any warning. As the restrictive order was entered without providing appellant notice and an opportunity to respond—indeed, respondents concede as much in their response—the

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[4]Jordan v. State, Dep't of Motor Vehicles, 121 Nev. 44, 62, 110 P.3d 30, 44 (2005).

[5]Id. at 60-62, 110 P.3d at 42-44.

[6]Id. at 60, 110 P.3d at 42.

[7]See id. at 63, 110 P.3d at 44.

court-access restriction violated appellant's due process rights.[8] Thus, we conclude that the district court abused its discretion when it issued the order restricting appellant's access to the district court.

Accordingly, although we affirm the district court's order dismissing appellant's district court action, we conclude that the district court improperly imposed a court-access restriction on appellant, and we remand this matter for further proceedings regarding that restriction. On remand, appellant will, of course, have notice of the possible imposition of a court-access restriction and will have an opportunity to be heard before any court-access restriction is imposed, which must comply with the guidelines adopted in Jordan.[9]

It is so ORDERED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

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[8]Id. Respondents' concession notwithstanding, they argue that the restrictive order itself provided sufficient notice and that appellant's motion for reconsideration afforded him an adequate opportunity to respond to the court-access restriction. But appellant's motion for reconsideration was considered subject to the court-access restriction. And since the district court determined the motion was "duplicative" and "refuse[d] to file it," the motion is not part of the appellate record available for this court's review. Accordingly, to the extent that appellant's motion for reconsideration constitutes appellant's constitutionally required opportunity to respond, we are unable to determine whether the district court abused its discretion in denying it.

[9]Id. at 60-62, 110 P.3d at 42-44.

cc: Hon. Michael R. Griffin, District Judge
David E. St. Pierre
Attorney General George Chanos/Carson City
Carson City Clerk