

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
BRENT T. ADAMS, DISTRICT JUDGE,
Respondents,

and

JD & T ENTERPRISES, D/B/A TRAVEL
TO GO; AND JEANETTE BUNN,
PRESIDENT,
Real Parties in Interest.

No. 43991

FILED

DEC 08 2005

JEANETTE M. BLOOM
CLERK OF THE SUPREME COURT
J. Richard
CLERK

ORDER DENYING PETITION

This is an original petition for a writ of mandamus and/or certiorari challenging a district court order that quashed service of a subpoena duces tecum.

The State petitions this court for a writ of mandamus asking us to reinstate the subpoena served on JD&T Enterprises and later quashed by the district court. In the alternative, the State petitions us for a writ of certiorari, asking us to order the district court to reinstate the subpoena and its order to comply with the subpoena. The parties are familiar with the facts, and we do not recount them in this order except as necessary for our disposition.

No appeal lies from an order quashing a subpoena; therefore, a writ petition is the appropriate method to challenge such an order.¹ The State argues that the district court's order quashing the subpoena was improper because the unsolicited facsimile transmission (facsimile) at issue is sufficient to give Nevada specific jurisdiction over JD&T.²

When jurisdiction is at issue, the plaintiff in the matter bears the burden of offering competent evidence supporting the exercise of personal jurisdiction over a party located outside this state.³ When factual disputes arise in a proceeding challenging jurisdiction, those disputes are resolved in the plaintiff's favor.⁴ JD&T argues that because the State relies on incompetent evidence, it has not met the evidentiary burden necessary to demonstrate jurisdiction. We agree.

The State relies on a copy of the complaint filed by L.J. Kutten, which includes a copy of the facsimile sent and Kutten's statement describing how he called the telephone number on the facsimile and was

¹See Firouzabadi v. District Court, 110 Nev. 1348, 1351-52, 885 P.2d 616, 618 (1994); Orme v. District Court, 105 Nev. 712, 717, 782 P.2d 1325, 1326 (1989).

²The State also argues that its subpoena powers under NRS 598.0963(4) are valid and applicable in this case and that section 1334.2 of the California Penal Code is inapplicable here because this is not a criminal case. The jurisdictional issue is the threshold determination and is dispositive of this case. Therefore, we do not address the validity of NRS 598.0963(4) or the applicability of section 1334.2 of the California Penal Code.

³Peccole v. District Court, 111 Nev. 968, 970-71, 899 P.2d 568, 570 (1995).

⁴Trump v. District Court, 109 Nev. 687, 694, 857 P.2d 740, 744 (1993).

informed by the person answering the telephone that the company that sent the facsimile was JD&T. However, Kuttan's statements are hearsay and are not in the form of sworn testimony. Thus, Kuttan's complaint is incompetent evidence and is insufficient to support the contention that JD&T actually sent the facsimile at issue. The State does not otherwise provide competent evidence or sworn testimony that demonstrates that JD&T was the entity that sent Kuttan the facsimile. Thus, the State has failed to meet its burden of providing competent evidence supporting the exercise of jurisdiction over JD&T. Because the State has failed to meet its evidentiary burden for jurisdiction, we do not address whether the sending of a single facsimile would have been sufficient to confer Nevada with jurisdiction over JD&T in this action. The district court did not manifestly abuse its discretion in quashing the subpoena.⁵

⁵See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981).

Therefore, we ORDER the petition DENIED.

Becker, C.J.
Becker

Rose, J.
Rose

Maupin, J.
Maupin

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Attorney General George Chanos/Carson City
Wm. Patterson Cashill
Washoe District Court Clerk