IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN SCOTT MARTENEY,

Petitioner,

vs.

THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO, THE HONORABLE JACK B. AMES, DISTRICT JUDGE,

Respondents,

and

SHAWNA SUE WOODS, F/K/A SHAWNA SUE MARTENEY,

Real Party in Interest.

No. 34807

FILED

MAR 02 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of prohibition challenges a district court order granting the real party in interest's motion to change venue from the Fourth Judicial District Court to the Eighth Judicial District Court. For reasons explained below, we construe this petition as one for mandamus relief.

Plaintiff/real party in interest Shawna Sue Woods (Woods), formerly known as Shawna Sue Marteney, and defendant/petitioner John Scott Marteney (Marteney) were granted a divorce in the Fourth Judicial District Court on October 5, 1992. The divorce decree was later amended in that same court. Woods and Marteney have one child, Robert, who appears to be eleven years old. In 1993, Woods and Robert moved to Clark County.

In April 1999, Marteney moved for sanctions in the Fourth Judicial District Court, alleging that Woods violated the amended divorce decree in failing to permit Robert to visit

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Marteney pursuant to the amended decree's visitation provisions. Shortly thereafter, the case was transferred from Department One to Department Two of the Fourth Judicial District Court. The district court set a hearing on the motion for sanctions. Woods then filed a motion to change venue and transfer the case to Clark County, to which Marteney filed an opposition. The district court vacated the hearing date on the motion for sanctions pending a decision on the motion for a change of venue. In August 1999, the district court granted the motion for a change of venue and transferred the case to the Eighth Judicial District Court.[1] The district court found that "Clark County is the most appropriate forum. Both the Plaintiff and the child have resided in Clark County since 1993." The district court made no findings regarding the convenience of witnesses or the ends of justice.

In September 1999, Marteney filed this original petition for a writ of prohibition, arguing that the district court lacked jurisdiction to transfer the case to the Eighth Judicial District Court. This court ordered an answer, which Woods has filed.

A writ of prohibition is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court. See NRS 34.320. A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Neither writ will issue, however, if petitioner has a plain, speedy and

[1]The order is stamped "August 32, 1999."

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adequate remedy in the ordinary course of law. See NRS 34.170; 34.330. Further, both writs are extraordinary remedies, and it is within the discretion of this court to determine if a petition will be considered. See State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983).

It appears that mandamus is the more appropriate remedy under these circumstances, because the district court may have manifestly abused its discretion in refusing jurisdiction and in ordering the case transferred to another district. Cf. Jarstad v. National Farmers Union, 92 Nev. 380, 552 P.2d 49 (1976) (order granting motion to quash may be challenged by petition for mandamus to compel the district court to accept jurisdiction). In the interest of judicial economy we may treat a petition for a writ of prohibition as one for mandamus. See Koza v. District Court, 99 Nev. 535, 665 P.2d 244 (1983).

There appear to be no standards specific to post-judgment motions for a change in venue; however, there are standards governing a motion to change the place of trial.[2] Generally, an action will be tried in the county in which the defendants, or any one of them, may reside when the complaint is filed. See NRS 13.040. On motion, the district court may change the place of trial "[w]hen the convenience of the witnesses and the ends of justice would be promoted by the change." NRS 13.050(2)(c).

[2]We note that an order changing or refusing to change the place of trial is appealable. See NRAP 3A(b)(2). A post-judgment order regarding venue, by contrast, is not appealable. For this reason, Marteney lacks a plain, speedy and adequate remedy in the ordinary course of law. See NRS 34.170. Extraordinary relief is available to Marteney. See Heilig v. Christensen, 91 Nev. 120, 532 P.2d 267 (1975) (noting that the right of appeal precludes extraordinary relief).

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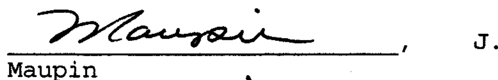
The defendant has a right to have the action tried in his or her county of residence, see NRS 13.040; Fabbi v. First National Bank, 62 Nev. 405, 414, 153 P.2d 122, 125 (1944), unless the district court had the discretion to change the venue under an exception such as those found in NRS 13.050(2). This presumption applies as strongly post-judgment as it does pre-trial.

We conclude that the district court manifestly abused its discretion in granting the motion to change venue and transferring the case to the Eighth Judicial District Court. The statutory presumption is that venue should lie in the district in which the defendant resides. See NRS 13.040. The sole consideration that the plaintiff and the parties' son reside in another district is an insufficient ground standing alone to transfer the case to another district.

We conclude that extraordinary relief is appropriate. We therefore direct the clerk of this court to issue a writ of mandamus directing the district court to vacate its order granting the motion to change venue, and transferring the case to the Eighth Judicial District Court.

It is so ORDERED.


Maupin, J.

Shearing, J.

Becker, J.

cc: Hon. Jack B. Ames, District Judge
Wilson & Barrows
Bell, Lukens & Kent
Elko County Clerk

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