

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LESLIE STOCKMEIER,
Appellant,
vs.
TRACEY D. GREEN, STATE HEALTH
OFFICER,
Respondent.

No. 58067

FILED

MAR 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Anderson*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order denying a petition for a writ of mandamus and injunction. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant filed a petition for a writ of mandamus and injunction, seeking an order compelling respondent to comply with the provisions of NRS 209.382(1)(b) regarding review of the nutritional adequacy of the diet of Nevada inmates. In response, respondent submitted a cover letter addressed to the Acting Director of the Department of Corrections, which, when sent to the Acting Director, was purportedly accompanied by reports addressing certain conditions of incarceration, including the adequacy of the inmates' diets. Respondent did not, however, file the reports or submit any other evidence to refute appellant's allegations that respondent had failed to examine the nutritional adequacy of the inmates' diets in compliance with NRS 209.382(1)(b). In the absence of any such evidence, we conclude that the district court abused its discretion by denying the writ petition. See City of Reno v. Reno Gazette-Journal, 119 Nev. 55, 58, 63 P.3d 1147, 1148

(2003) (providing that a district court's decision to deny a writ petition is reviewed for an abuse of discretion).

Accordingly, we reverse the district court's order denying the writ petition and remand this matter to the district court. On remand, the district court shall require respondent to submit evidence, such as the reports that were purportedly attached to the letter addressed to the Acting Director of the Department of Corrections, in order to allow the district court to consider the merits of appellant's writ petition.¹

It is so ORDERED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. James Todd Russell, District Judge
Robert Leslie Stockmeier
Attorney General/Las Vegas
Carson City Clerk

¹Upon review of the record and the parties' arguments, we conclude that the district court did not abuse its discretion by setting aside the entry of default, as appellant's petition was styled as a "petition for writ of mandamus and injunction." See NRS 34.200 ("The writ [of mandamus] shall not be granted by default.").