

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT LESLIE STOCKMEIER,
Appellant,
vs.
ARTHUR E. MALLORY,
Respondent.

No. 62581

FILED

JAN 21 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a pro se appeal from a district court order denying a petition for a writ of mandamus seeking to require respondent to destroy a report contained within respondent's files relating to appellant. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge. Respondent has filed a response, and appellant has filed a reply.

Below, the district court denied appellant's mandamus petition on the ground that it lacked jurisdiction to consider the petition insofar as NRS 179.245 requires a petition seeking to seal criminal records to be brought in the county of conviction. But appellant's petition did not seek relief under NRS 179.245, nor could it be construed as a petition for relief under that statute, as appellant did not seek to have his conviction records sealed. Rather, appellant sought mandamus relief under NRS 34.170 in an effort to have a particular report contained in respondent's files destroyed based on language on the cover sheet of the report and certain federal statutes. As the district court has jurisdiction to consider a petition for a writ of mandamus, *see* Nev. Const. art. 6, § 6, we conclude that the district court erred by concluding that it lacked jurisdiction over


appellant's petition, *see In re Nev. State Eng'r Ruling No. 5823*, 128 Nev. ___, ___, 277 P.3d 449, 453 (2012) ("When decided on pleadings alone, '[s]ubject matter jurisdiction [presents] a question of law subject to de novo review.'" (alterations in original) (quoting *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009)), and therefore abused its discretion by denying writ relief on this basis. *See Reno Newspapers, Inc. v. Haley*, 126 Nev. ___, ___, 234 P.3d 922, 924 (2010) (explaining that the denial of a writ petition is generally reviewed for an abuse of discretion).¹


In his response, respondent argues that, even if it is determined that the district court had jurisdiction to consider the petition, the denial of the writ petition should nonetheless be affirmed, either because venue was improper or because respondent was not properly served with process. Venue, however, is not jurisdictional, and an action that is brought in an improper county may be tried in that county if no proper demand for a change of venue is made. NRS 13.050(1); *Lamb v. Knox*, 77 Nev. 12, 15, 358 P.2d 994, 995 (1961). Because no demand for a change of venue appears in the record on appeal, we decline respondent's request for us to affirm the denial of appellant's petition on the ground that venue was improper. *See* NRS 13.050(1). Finally, as the mandamus statutes specifically contemplate the filing and consideration of a writ petition without notice to the adverse party, *see* NRS 34.200 (providing that the district court may grant an alternative writ "[w]hen the application to the court or district judge is made without notice to the adverse party"), we likewise conclude that denial of the petition is not

¹In so concluding, we express no position on the merit of the substantive issues raised by appellant's district court writ petition.

mandated based on appellant's failure to serve the petition on respondent. We therefore decline respondent's request that we affirm the denial of the writ petition based on lack of service of process. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further proceedings consistent with this order.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Richard Wagner, District Judge
Robert Leslie Stockmeier
Churchill County District Attorney/Fallon
Pershing County Clerk

²Having considered the parties' arguments, and in light of our resolution of this matter, we deny respondent's request that we warn appellant that his access to the courts may be restricted in the future.