

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN FRANCIS ARPINO,  
Appellant,  
vs.  
ATTORNEY SCOTT EDWARDS; AND  
ATTORNEY ROBERT C. BELL,  
Respondents.

No. 65929

FILED

FEB 12 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *M. Wilcox*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is a pro se appeal from a district court order granting a motion to change venue. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant filed a complaint in the First Judicial District Court against respondents alleging claims for legal malpractice against his court appointed criminal defense attorneys. Counsel for respondents contacted appellant and requested that he stipulate to change the venue of the action to the Second Judicial District Court on the basis that both respondents are residents of Washoe County. Appellant refused to stipulate, noting his concern that because they are practicing lawyers in Washoe County, respondents would be given preferential treatment from the judges in the Second Judicial District Court. Respondents then filed a motion to change venue, arguing in part, that venue should be moved to the Second Judicial District Court because NRS 13.040 provides that an action shall be tried "in the county in which the defendants . . . may reside at the commencement of the action." The district court granted the motion, and this appeal followed.

NRAP 3A(b)(6) allows for an appeal from a district court order granting or denying a motion to change venue. "If a demand for a change of venue is filed in a timely manner, and no defendants reside in the county in which the action is filed, and that county is not otherwise a proper venue, then removal is mandatory." *Washoe Cnty. v. Wildeveld*, 103 Nev. 380, 382, 741 P.2d 810, 811 (1987); *see also W. Pac. R.R. Co. v. Krom*, 102 Nev. 40, 42-43, 714 P.2d 182, 184 (1986). Because respondents moved for a change of venue under NRS 13.040, which requires an action to be tried in the county in which defendant resides, appellant bore the burden of proving that the action was commenced within the proper venue. *Wildeveld*, 103 Nev. at 382, 741 P.2d at 811. Respondents provided affidavits showing that they are both residents of Washoe County, and appellant provided no substantive opposition to respondents' motion. Appellant therefore failed to meet his burden to show that his action was properly commenced in the First Judicial District Court, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Brent T. Adams, District Judge  
Hon. James E. Wilson, District Judge  
John Francis Arpino  
Washoe County District Attorney/Civil Division  
Washoe District Court Clerk  
Carson City Clerk