

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MERCEDES FLANNERY,
Appellant,
vs.
IRA B. SHAW,
Respondent.

No. 71440

FILED

DEC 28 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order changing venue in a custody action. Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

Appellant filed the underlying action in Clark County, and respondent subsequently sought to have venue changed to Washoe County, where he resides. In support of his motion, appellant only raised arguments that he was entitled to a change of venue as a matter of right. The district court, however, granted a change of venue under NRS 13.050(2)(c), finding that Washoe County was “the appropriate venue for trial in this matter” and that the ends of justice would be promoted by the change. This appeal followed.

Although Washoe County was the proper venue for the underlying case to have been filed, *see* NRS 13.040 (providing that an “action shall be tried in the county in which the defendants, or any one of them, may reside at the commencement of the action”), in order to have venue changed as a matter of right, respondent was required to file his demand for a change of venue within the time allowed for filing an answer to the complaint. *See* NRS 13.050(1) (providing that a complaint may be tried in an improper county “unless the defendant before the time for

answering expires demand[s] in writing that the trial be had in the proper county”); *Grey v. Grey*, 111 Nev. 388, 389, 892 P.2d 595, 596 (1995) (“To obtain a change of venue as a matter of right, the demand must be timely filed.”). Here, respondent’s demand for a change of venue was not filed within the time for filing an answer to the complaint, and thus, respondent was not entitled to a venue change as a matter of right.

As noted above, the district court based its decision to change venue on NRS 13.050(2)(c), which provides a court with discretion to change venue “[w]hen the convenience of the witnesses and the ends of justice would be promoted by the change.”¹ The Nevada Supreme Court has indicated that venue may only be changed under NRS 13.050(2)(c) “under exceptional circumstances strongly supporting another forum,” and that “[a] motion for change of venue based on forum non conveniens must be supported by affidavits so that the district court can assess whether there are any factors present that would establish such exceptional circumstances.” *Mountain View Recreation, Inc. v. Imperial Commercial Cooking Equip. Co.*, 129 Nev. 413, 419, 305 P.3d 881, 885 (2013). In the absence of such evidence as to why a venue change is warranted, the supreme court has concluded that a venue change under NRS 13.050(2)(c) is improper. *Id.* at 420, 305 P.3d at 885.


Here, respondent did not seek a change of venue based on forum non conveniens and, thus, did not submit affidavits to demonstrate exceptional circumstances supporting a venue change on this basis.

¹A defendant need not make a timely demand for a change of venue in order to have venue changed under NRS 13.050(2)(c). *Kenning Car Rental, Inc. v. Desert Rent-A-Car*, 105 Nev. 118, 120, 771 P.2d 150, 151 (1989).

Moreover, the district court did not make specific findings based on the evidence before it demonstrating why Washoe County would be more convenient for any witnesses and made only a general finding that the ends of justice would be promoted by the change. Under these circumstances, we conclude the district court abused its discretion by granting the motion for a change of venue under NRS 13.050(2)(c). *See id.* at 418, 305 P.3d at 884 (providing that an order changing venue based on forum non conveniens is reviewed for an abuse of discretion). Accordingly, we reverse the district court's order granting a change of venue on this basis and remand this matter to the district court for further proceedings.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. William S. Potter, District Judge, Family Court Division
Lansford W. Levitt, Settlement Judge
Leavitt Law Firm
Van Ry Law Offices, LLP
Eighth District Court Clerk