

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRUCE HARRISON BIRCH,
Appellant,
vs.
GLORIA CARPENTER, D.O.N.,
Respondent.

No. 71387

FILED

FEB 27 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a petition for a writ of mandamus in a public records action. Seventh Judicial District Court, White Pine County; Gary Fairman, Judge.

Appellant, an inmate incarcerated at Ely State Prison (ESP), filed the underlying mandamus petition in the district court seeking to compel respondent, who he asserts is the Director of Nursing at ESP, to provide him with the names of all Nevada licensed nurses employed by ESP. Appellant had previously sought to obtain this information from respondent, who informed him that he needed to submit a public records request to the Nevada Department of Corrections' public information officer. Despite this response, appellant continued to direct his subsequent requests to respondent and later filed the underlying petition to compel her to provide this information.

Although appellant moved the district court to hold respondent in contempt, in lieu of a default, for not responding to his petition, the district court instead entered an order dismissing the petition. In so doing, the district determined, among other things, that dismissal was warranted because appellant had failed to demonstrate that respondent was the proper party to respond to appellant's public records request. In making this determination, the district court noted that

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appellant had failed to demonstrate that respondent had legal custody or control of the subject records, so as to enable her to respond to appellant's NRS Chapter 239 request and that appellant failed to name any governmental entity as a party to his case.

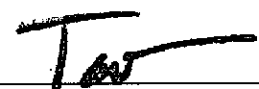
On appeal from the district court's dismissal of his petition, appellant first asserts the district court lacked the authority to dismiss his petition in light of respondent's failure to respond, arguing that the court was required to hold appellant in contempt and order her to provide the names he requested. While appellant styled his district court request for this relief as one for contempt, and sought a monetary sanction against respondent, he also asked the court to order respondent to comply with his public records request within 10 days, and thereby effectively requested that his writ petition be granted by default. But NRS 34.200 expressly provides that a writ of mandamus may not be granted by default, and the district court shall instead hear the case, regardless of whether the adverse party appears. By statute, when no answer to the petition is filed, the case is decided based on the papers filed by the party seeking the writ. *See* NRS 34.260. Thus, the district court could not simply order respondent to provide the information appellant sought based on her failure to respond to his petition; instead, the court was required, as it did here, to decide whether appellant was entitled to relief based on the documents he filed in district court. *See Gulbranson v. City of Sparks*, 89 Nev. 93, 506 P.2d 1264 (1973) (holding that a petitioner cannot prevail on a request for mandamus relief based on the adverse party's failure to respond and discussing the statutory procedure for deciding a petition under these circumstances).


Turning to the grounds on which the district court denied the petition, as detailed above, the district court held, among other things, that appellant failed to demonstrate that respondent had legal custody of

the records appellant sought or that she was otherwise the proper party to address appellant's request. On appeal, appellant has failed to present any argument challenging the district court's determination of this issue,¹ and thus, he has waived any challenge to that ruling. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised by a party on appeal are deemed waived). Accordingly, we must conclude the district court did not abuse its discretion in dismissing the petition for mandamus relief, and we therefore affirm that decision. See *DR Partners v. Bd. of Cty. Comm'rs*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (stating that appellate courts review a district court's decision to grant or deny a petition for a writ of mandamus for an abuse of discretion).

It is so ORDERED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹While appellant baldly asserts that respondent had previously provided him with the names of certain nurses employed at ESP, this assertion is not responsive to whether respondent had legal custody of the records appellant sought or was otherwise the proper party to respond to his public records request.

²In light of our resolution of this matter, we need not reach appellant's remaining appellate arguments. Additionally, we deny as moot all requests for relief currently pending in this appeal.

cc: Hon. Gary Fairman, District Judge
Bruce Harrison Birch
White Pine County Clerk