

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GLENN R. WAITE, M.D., AN  
INDIVIDUAL,  
Appellant,  
vs.  
DAVID M. ZANIEL, OF RANALLI &  
ZANIEL, LLP,  
Respondent.

No. 77607-COA

**FILED**

JUN 24 2019

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

*ORDER OF AFFIRMANCE*

Glenn R. Waite, M.D. appeals from a district court order granting a change of venue. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Waite filed a professional negligence complaint against respondent David Zaniel after a separate action that Waite filed, and allegedly retained Zaniel to represent him in, was dismissed. In the instant action, the district court granted Zaniel's motion for change of venue, concluding that Zaniel, as the only defendant, resided in Reno, Nevada, such that Washoe County was the proper venue pursuant to NRS 13.040. This appeal followed.

When a defendant brings a timely demand for change of venue under NRS 13.050(1), and the district court determines the county in the complaint is not proper, the district court must grant the motion to change venue. *Kenning Car Rental, Inc. v. Desert Rent-A-Car*, 105 Nev. 118, 120, 771 P.2d 150, 151 (1989). To be timely, the demand must be filed before the time for answering expires. NRS 13.050(1); *Hood v. Kirby*, 99 Nev. 386, 387, 663 P.2d 348, 349 (1983).

Here, Zaniel timely filed his demand and motion for change of venue, as the time to answer was extended to August 13, 2018, following the reversal and remand of a prior order dismissing the complaint. *Cf.* NRCP 12(a)(3)(A) (extending the time to answer to 14 days after the court denies a motion to dismiss); *Randono v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807, 808 (1984) (measuring the time limit in NRS 13.050(1) from the amended complaint, even though the defendant already answered the original complaint). Additionally, the district court correctly determined that Clark County was not the proper venue as NRS 13.040 provides that actions not previously addressed in NRS Chapter 13 shall generally be tried in the county in which the defendant resides. Here, the district court found, and Waite does not dispute, that Zaniel resides in Washoe County. Thus, we discern no impropriety in the district court's determining Washoe County, rather than Clark County, is the proper venue pursuant to NRS 13.040.

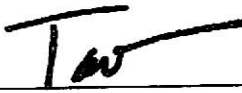
As to Waite's contention that Clark County is the proper venue because NRS 13.010(1) provides that, in breach of contract actions, the proper venue is the county in which the obligation is to be performed, and Zaniel agreed to represent Waite in Clark County, we similarly discern no impropriety in the district court's rejection of that assertion. Here, it is not clear that NRS 13.010(1) applies because there is no evidence that a contract existed and Waite's claims are for professional negligence, rather than breach of contract. But even if this rule does apply, it provides that the action must be tried in the county where the obligation is to be performed or in which the obligated person resides. Thus, we cannot conclude that the district court improperly determined that Zaniel's

residence in Reno made Washoe County the proper venue or improperly granted his motion for change of venue.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Tierra Danielle Jones, District Judge  
Glenn R. Waite, M.D.  
Ranalli Zaniel Fowler & Moran, LLC/Reno  
Eighth District Court Clerk