

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RENARD TRUMAN POLK,  
Appellant,  
vs.  
PERSHING COUNTY CLERK'S  
OFFICE; CAROL ELERICK; DAWN  
BEQUETTE; AND MACKENZIE  
HODGES,  
Respondents.

No. 69006

**FILED**

JUL 28 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *J. Hendrich*  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

This is an appeal from a district court order dismissing a petition for a writ of mandamus for failure to comply with NRCP 4(i)'s service requirements.<sup>1</sup> Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Appellant filed the underlying writ petition in the district court seeking mandamus relief related to the entry and provision of written, file-stamped orders dismissing various small claims actions appellant had filed. Four months later, and with no notice to appellant, the district court entered an order dismissing the petition without prejudice on its own initiative based on appellant's failure to comply with the 120-day service rule set forth in NRCP 4(i). This appeal followed.

On appeal, appellant presents several issues, including questioning whether the district court improperly held that the completion of service consistent with the requirements outlined in NRCP 4 was

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<sup>1</sup>Although the petition was entitled as one alternatively seeking either mandamus or prohibition, the petition did not actually request any prohibition relief. Thus, we treat the petition as only seeking a writ of mandamus.

necessary in order to maintain a petition seeking mandamus relief. In response, respondents argue that service of the petition within the 120-day time period set forth in NRCP 4(i) was required and that the district court properly dismissed the underlying matter based on appellant's failure to serve the petition.

Under NRS Chapter 34, a petition or application for mandamus relief is separate and distinct from the actual writ issued by the district court if the petition or application is ultimately granted. And while NRS 34.280(1) provides that, if the district court determines to issue or grant the writ, the writ itself must be treated and served in the same manner as a summons in a civil action, there is nothing in NRS Chapter 34 requiring personal service of the petition or application for mandamus relief. Indeed, NRS 34.200 expressly recognizes that a petition or application for a writ of mandamus can be made without providing any notice to the adverse parties so long as any writ granted based on such an application is issued as an alternative writ commanding the adverse parties to either perform the required act or show cause before the court why they have not done so.<sup>2</sup> See NRS 34.190 (providing that writs of mandamus can be issued as either an alternative writ or as a peremptory writ, the latter of which omits the option allowing the adverse parties to show cause why they have not performed the required action).

Under these circumstances, we determine that the district court abused its discretion in concluding that appellant was required to comply with the service requirements outlined in NRCP 4 and in


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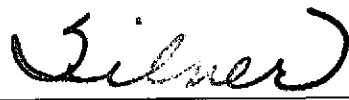
<sup>2</sup>As detailed in NRS 34.300, the Nevada Rules of Civil Procedure apply to district court mandamus proceedings "[e]xcept as otherwise provided in NRS 34.150 to 34.290, inclusive."

dismissing the underlying petition based on appellant's failure to serve it on respondents within NRCP 4(i)'s 120-day period. *See DR Partners v. Bd. of Cty. Comm'rs*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (providing that an appellate court reviews the district court's resolution of a mandamus petition for an abuse of discretion); *Frazier v. Drake*, 131 Nev. \_\_\_, \_\_\_, 357 P.3d 365, 369 (Ct. App. 2015) (noting that, "[w]hile the abuse of discretion standard is generally deferential, the reviewing court will not defer to a district court decision that is based on legal error."). Accordingly, we reverse the district court's decision and remand this matter to the district court for further proceedings.

It is so ORDERED.

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

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

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Jim C. Shirley, District Judge  
Renard Truman Polk  
Pershing County District Attorney  
Pershing County Clerk