

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAX REED, II,
Appellant,
vs.
LABOR COMMISSIONER,
Respondent.

No. 87403-COA

FILED

MAY 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Max Reed, II, appeals from a district court order dismissing a petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Reed, who is incarcerated, filed a petition for writ of mandamus in the district court against the Labor Commissioner, seeking to have her enforce Nevada's labor laws with regard to the wages he was paid from his job in prison. At the same time, Reed filed a motion for removal of the Labor Commissioner for alleged non-feasance in office pursuant to Article 7, Section 4 of the Nevada Constitution and NRS 283.440, asserting that she refused to perform her official duties when she failed to pursue Reed's complaint for unpaid wages. The district court clerk filed a notice of nonconforming document for the motion for removal, stating that it did not have a hearing designation as required by EDCR 2.20(b).

Subsequently, the district court issued an order to show cause, ordering Reed to appear at a September 11, 2023, hearing and show cause why his writ petition should not be dismissed for failure to serve the petition

pursuant to NRS 34.280.¹ In response to the order to show cause, Reed submitted a motion for transportation of an inmate to the district court, which received his motion on August 28, 2023, but did not file it at that time.

On September 11, 2023, the district court held the hearing on the order to show cause, and thereafter entered a written order denying and dismissing Reed's writ petition without prejudice based on Reed's failure to serve the petition, appear at the hearing, or file a written response to the order to show cause.

Following entry of the written order, the district court clerk filed Reed's motion for transportation as well as a notice of a nonconforming document for the motion, stating that it did not have a hearing designation as required by EDCR 2.20(b). This appeal followed.

"A district court's decision to grant or deny a writ petition is reviewed by this court under an abuse of discretion standard." *DR Partners v. Bd. of Cnty. Comm'rs*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000).

On appeal, Reed argues that the district court erred by dismissing his petition without allowing him to be heard when he timely filed a transport motion. We agree. The record shows that the district court ordered Reed to appear on September 11, 2023, regarding his petition and that the district court clerk received his motion requesting transportation to appear at the September 11 hearing on August 28, 2023. For reasons not clear in the record, the clerk did not file his motion until September 22, 2023, after the hearing occurred. Thus, the record demonstrates that Reed


¹NRS 34.280 provides that, "[t]he writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the order of the court or district judge issuing the writ."

made a timely effort to comply with the district court's order and secure transportation from prison to attend the hearing, but that his efforts were thwarted by the district court's delay in filing his request. *See* NRC 5(d)(2)(A) (stating that papers not filed electronically are filed by delivering them to the clerk). Despite Reed's timely request, the district court dismissed his petition based on his failure to appear at the hearing. The district court further noted Reed's failure to file a written response as a basis for dismissal—however, the record demonstrates that Reed was never ordered to file a written response. Under these circumstances, we conclude that the district court abused its discretion by dismissing Reed's petition without allowing him to appear as directed. *See DR Partners*, 116 Nev. at 621, 6 P.3d at 468. We therefore reverse the district court's dismissal order and remand this matter for further proceedings.

While we reverse this matter for the reasons set forth above, given the district court's ruling regarding service of the petition and the application of NRS 34.280, a brief discussion of this issue is warranted for purposes of remand. Although NRS 34.280 requires a *writ* to be served in the same manner as a summons in a civil action, NRS 34.200 expressly recognizes that a *petition* for a writ of mandamus can be filed 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. *See, e.g., Chala v. Nev. Bd. of Parole Comm'ns*, No. 53230, 2009 WL 2601849, *1 n.2 (Nev. Aug. 21, 2009) (Order of Affirmance) (stating that NRS 34.200 expressly recognizes that an application for a writ of mandamus may be made without notice to the adverse party and service under NRS 34.280 is required only if the district

court decides to issue or grant the writ); *Patton v. Nev. Bd. of Parole Comm'ns*, No. 82921-COA, 2022 WL 214103, *2 (Nev. Ct. App. Jan. 24, 2022) (Order of Reversal and Remand) (explaining that NRS 34.200 recognizes that a petition for writ of mandamus can be filed without providing notice to the adverse party). Here, it appears that the court failed to distinguish between a petition for a writ of mandamus and the writ itself in dismissing Reed's petition based on NRS 34.280. Accordingly, the district court should take the above analysis into account in reevaluating this issue on remand.² Therefore, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

²To the extent that Reed makes arguments regarding the merits of his underlying case or any of the requests for relief filed therein, we make no comment on the merits of the case in light of our reversal. Given our disposition, we do not address those matters as they should be addressed by the district court in the first instance.

cc: Hon. Joseph Hardy, Jr., District Judge
Max Reed, II
Labor Commissioner
Eighth District Court Clerk