

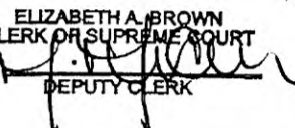
IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS COUNTY CLERK, AMY
BURGANS, IN HER OFFICIAL
CAPACITY AS THE ELECTED CLERK
OF DOUGLAS COUNTY, NEVADA,
Appellant,
vs.
JASON GARRETT GIBSON, AN
INDIVIDUAL,
Respondent.

No. 89478

FILED

OCT 16 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a preelection challenge. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Respondent Jason Garret Gibson is the Democratic Party's candidate for Douglas County Commissioner, District I in the 2024 general election. Appellant, Douglas County Clerk Amy Burgans, filed a preelection challenge asserting that if Gibson was elected, he could not take office because Gibson changed his party affiliation between December 31, 2023, and the date of the general election. At a status hearing on the matter, Gibson asserted he had not changed his party affiliation. Instead, Gibson asserted his private information, including his signature and passwords, were publicly available, making it possible for someone to change his party affiliation without his knowledge. The district court did not hold an evidentiary hearing, and instead, dismissed the matter as moot because mail ballots had already been sent to voters.

Burgans first challenged the district court's order by filing an emergency petition for a writ of mandamus or prohibition with this court.

We dismissed that petition because an appeal was available. *Douglas Cnty. Clerk v. Ninth Jud. Dist. Ct.*, No. 89436 (Nev. Oct. 14, 2024) (Order Denying Petition). The next day, Burgans filed this appeal. Burgans also filed an emergency motion requesting relief by October 18, 2024, as early voting begins the next day. We grant Burgans' motion. Additionally, considering relief is necessary within a matter of days and Gibson never filed an answer to Burgans' writ petition in response to an order issued by this court, we resolve this matter based on the opening brief and record on appeal.

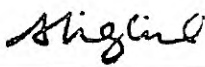
Burgans argues that the district court erred by dismissing the preelection challenge as moot. We agree. Burgans sought the relief of posting signs at each polling location notifying voters of Gibson's inability to take office, if elected. *See* NRS 293.2045(1)-(2) (providing election officers can post signs at polling locations of a person's disqualification for the office when "a court of competent jurisdiction finds in any preelection action that a person who is a candidate for any office fails to meet any qualification required for the office pursuant to the Constitution or laws of this State"). NRS 293.2045(2) specifically provides that the requested relief is available even if the candidate's name remains on the ballot and even though mail ballots have been sent to voters. Thus, the district court erred in concluding that the mailing of ballots impacted the available relief under NRS 293.2045(2). Because there is still a live controversy regarding Gibson's ability to take office and because the requested relief is still available, the matter is not moot. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (explaining that a case is moot if a live, justiciable controversy is no longer present).

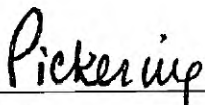
Although Burgans also asks that we resolve the merits of the preelection challenge in the first instance, we cannot do so. Burgans'


preelection challenge is based on the assertion that Gibson cannot take office if elected due to a change in political party affiliation on July 12, 2024. See NRS 293.176 (providing that “no person may be a candidate of a major political party for partisan office in [this general] election if the person has changed . . . [t]he designation of his or her political party affiliation” between December 31, 2023, and November 5, 2024). A factual dispute remains regarding the change in Gibson’s party affiliation. And “[a]s we have repeatedly noted, an appellate court is not an appropriate forum in which to resolve disputed questions of fact.” *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981). Consistent with the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to resolve appellant’s preelection challenge before October 19, 2024.¹

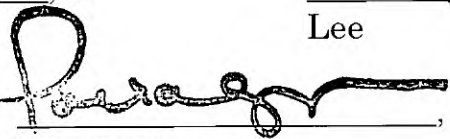

_____, C.J.
Cadish


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

¹The Honorable Justice Bell did not participate in the decision in this matter. We direct the clerk of this court to issue the remittitur immediately. See NRAP 41(b) (allowing the court to shorten the time for the remittitur to issue).

cc: Hon. Nathan Tod Young, District Judge
Douglas County District Attorney/Minden
Jason Garrett Gibson
Douglas County Clerk