

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

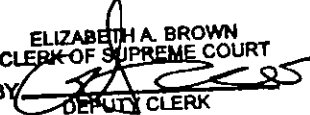
BRIAN CHARLES KERZETSKI,  
Appellant,  
vs.  
CLARK COUNTY DEPARTMENT OF  
FAMILY SERVICES,  
Respondent.

No. 87809-COA

RECEIVED

**FILED**

MAR 28 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Brian Charles Kerzetski appeals from a district court order dismissing his petition for judicial review for lack of subject matter jurisdiction. Eighth Judicial District Court, Clark County; Michael Villani, Senior Judge.

On February 27, 2023, a hearing officer served the final agency decision upholding respondent Clark County Department of Family Services (DFS)'s findings of substantiation concerning reports that Kerzetski had sexually abused his minor stepdaughter. On May 25, 2023, Kerzetski mailed the instant petition for judicial review to the district court, which was filed by the court on June 7, 2023. Shortly thereafter, he moved to stay the final agency decision.

After appearing in the action, DFS moved to dismiss Kerzetski's petition, arguing—among other things—that the petition was filed outside the 30-day time limit under NRS 233B.130(2)(d) and that the district court therefore lacked subject matter jurisdiction over the petition. In his opposition, Kerzetski argued that his petition should be considered and not dismissed, as its untimeliness was due to a clerical error with the clerk's office. Specifically, Kerzetski, who is incarcerated, argues that he wrote two

letters to the court expressing his intent to file a petition for judicial review on March 23 and 28, and submitted a motion for a 60-day extension of time to file the petition for judicial review on March 31. Kerzetski alleged that the district court clerk's office erroneously labeled that motion as a petition for judicial review and filed it in Eighth Judicial District Court Docket. No D-11-448084-D, his divorce case. Accordingly, Kerzetski argued that, because the clerk's office labeled his motion as a petition for judicial review, his March 31 filing should be construed as a timely petition for purposes of NRS 233B.130(2)(d) despite having been filed in the divorce case.

Later, without holding a hearing, the district court entered an order dismissing Kerzetski's petition for judicial review on the grounds that the petition was untimely filed under NRS 233B.130(2)(d) and that he had failed to serve the attorney general as required by NRS 233B.130(2)(c)(1). This appeal followed.

This court reviews a district court's determination concerning subject matter jurisdiction de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). Generally, courts do not have jurisdiction to review official decisions of administrative agencies unless there is a statute allowing it. *Washoe Cnty. v. Otto*, 128 Nev. 424, 431, 282 P.3d 719, 724 (2012). The Nevada Supreme Court has previously explained that the filing requirements of NRS 233B.130(2) are "mandatory and jurisdictional" and a "district court lacks jurisdiction to consider a petition that fails to comply with" that statute. *Id.* at 432-33, 282 P.3d at 725.

Having considered Kerzetski's informal brief and the record on appeal, we affirm the order of the district court dismissing his petition for judicial review. On appeal, Kerzetski argues that he timely filed a petition for judicial review but that the document was filed in the wrong case—


specifically, his divorce case. But this argument is inconsistent with the argument he presented below, which is that his motion for an extension of time to file the petition for judicial review was mistakenly labeled as a petition for judicial review by the district court clerk's office and filed in his divorce case, such that the motion should be construed as a timely petition for judicial review based on the actions of the clerk's office. See *Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) (“[P]arties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below.” (internal quotation marks omitted)).

Moreover, Kerzetski's argument that he timely submitted a petition for judicial review that was mistakenly filed in the divorce case is belied by the record on appeal. Notably, the exhibit attached to Kerzetski's opposition to DFS's motion to dismiss, which is the document that was filed in the divorce action, consists of a cover letter entitled “Petition for Judicial Review,” which included the case number for Kerzetski's divorce case, D-11-44804-D, a letter from Kerzetski stating that he is attempting to file a petition for judicial review and a motion for a 60-day extension of time to file the petition for judicial review. However, there is no actual petition for judicial review included with this exhibit.


Under NRS 233B.130, petitions for judicial review must “[b]e instituted by filing a petition in the district court” and “[b]e filed within 30 days after service of the final decision from the agency.” NRS 233B.130(2)(b), (d). District courts lack jurisdiction to consider petitions that do not comply with the requirements of NRS 233B.130(2). *Otto*, 128 Nev. at 432-33, 282 P.3d at 725. And here, because Kerzetski did not timely file a petition for judicial review as required by NRS 233B.130(2), the

district court lacked subject matter jurisdiction over the petition. *See id.* As a result, we conclude that the district court did not err in dismissing the case for lack of subject matter jurisdiction. We therefore affirm the dismissal of Kerzetski's petition for judicial review.

It is so ORDERED.<sup>1</sup>

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 14  
Hon. Michael Villani, Senior Judge  
Brian Charles Kerzetski  
Clark County District Attorney/Juvenile Division  
Eighth District Court Clerk

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<sup>1</sup>In light of our conclusion that the district court lacked subject matter jurisdiction over Kerzetski's petition for judicial review based on its untimeliness, we need not address his remaining arguments.