IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE MICHAEL COX,
Petitioner,
vs.
THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WHITE PINE, AND THE HONORABLE DAN L. PAPEZ, DISTRICT JUDGE,
Respondents,
and
WILLIAM B. RIRIE HOSPITAL, AND WILLIAM B. RIRIE HOSPITAL X-RAY TECHNICIANS,
Real Parties in Interest.

No. 39606

FILED

MAR 0 6 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS[1]

This original proper person petition for a writ of mandamus challenges the district court's alleged refusal to file a notice of appeal from a purported order denying petitioner's motion for entry of a default judgment against the real parties in interest. Petitioner also addresses

[1]We direct the clerk of this court to amend the caption on this court's docket to reflect the caption on this order. We note that the petition erroneously indicated that the underlying district court action took place in Eureka County, and so the Eureka County Clerk was copied on our June 11, 2002, order directing an answer to this petition. The documentation before us, however, indicates that the action occurred in White Pine County. Inasmuch as Eureka County and White Pine County are both in the Seventh Judicial District, and the proper district judge was served and has filed an answer, it appears that no prejudice has resulted from this error. We nevertheless direct the clerk of this court to serve a courtesy copy of this court's June 11 order upon the White Pine County Clerk so that the district court file will be complete.

03-03744

the merits of the district court's purported order. Because it appeared that the district court may have refused to file documents that were in the proper form,[2] we directed respondents to file an answer addressing this issue. In addition, because the order petitioner allegedly attempted to appeal was not substantively appealable, and because the petition addressed the merits of the district court's purported order, we directed the real parties in interest to file an answer on this issue. The district court and real parties in interest both filed timely answers that clearly and comprehensively address the issues raised by petitioner.[3]

Petitioner contends that the district court refused to file a notice of appeal from an order denying his motion for a default judgment. The district court's answer, however, indicates that no such order was entered and, moreover, that no notice of appeal was submitted for filing. In particular, the district court properly deemed itself without jurisdiction to address petitioner's motion for a default judgment after the case was removed to federal court. The district court further notes that even after

---

[2]See Sullivan v. District Court, 111 Nev. 1367, 904 P.2d 1039 (1995).

[3]We conclude that petitioner has demonstrated good cause for waiving the filing fee in this matter, see NRAP 21(e), and so no filing fee is due. As we have considered the following documents, we grant petitioner's request to appear in proper person for the limited purpose of filing the petition received on May 9, 2002, and the motion to proceed in forma pauperis received on May 9, 2002, and we direct the clerk of this court to file these documents. We have reviewed the remaining documents submitted by petitioner, and conclude that any relief requested is not warranted at this time. In particular, we note that this order is a matter of public record, and so is not confidential, and that petitioner has apparently already commenced proceedings challenging the Department of Prisons' inmate mail policies and so we do not consider them here.

the notice of removal, it has nevertheless filed documents received from petitioner. The only exception is for proposed orders and judgments submitted by petitioner, which are date-stamped and received but not filed. The district court's contentions are supported by a copy of the district court's docket sheet, indicating that several documents have been filed by petitioner, but that no order denying his motion has been entered. In addition, the district court's review of its file revealed that no notice of appeal appeared to have been submitted.[4]

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station,[5] or to control an arbitrary or capricious exercise of discretion.[6] A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law.[7] Further, mandamus

---

[4]Petitioner attached to his petition a document purporting to be a notice of appeal, dated February 27, 2002, from a January 25, 2002 order. The district court's docket reflects that no order was entered on or about January 25, 2002. If petitioner in fact submitted the notice of appeal to the district court, it should have been filed; however, it is not clear that the district court ever received such a document. In addition, any such notice of appeal would have been ineffective, as no order, appealable or otherwise, had been entered.

[5]See NRS 34.160.

[6]See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

[7]NRS 34.170.

is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered.[8]

A district court has a duty to file documents presented to it for filing that are in the proper form.[9] Here, the documentation before us indicates that the district court was fulfilling this duty precisely as it should.

As to the merits, it first appears that no such order as described by petitioner was ever entered by the district court. This was proper, in that the action was removed to federal court based on the federal question presented by petitioner's claims under 42 U.S.C. § 1983.[10] Also, contrary to petitioner's allegation, it is clear from the documentation attached to the answers filed in this matter that the entire action was removed, and nothing remains pending in state court. Finally, petitioner was not granted leave to amend his complaint to add the real parties in interest as defendants before the action was removed,[11] and so a default judgment against them would not be proper even if the state court had jurisdiction to enter one.

---

[8]Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

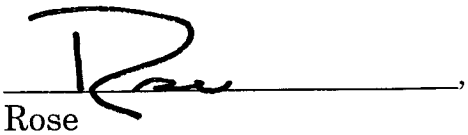
[9]See Sullivan, 111 Nev. 1367, 904 P.2d 1039.

[10]See 28 U.S.C. § 1441 (2000).

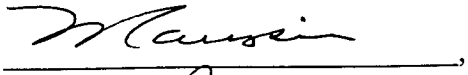
[11]See NRCP 15(a) (requiring leave of court to amend a complaint after an answer has been filed).

Having considered this petition and the answers thereto, and having concluded that this court's intervention by way of extraordinary relief is not warranted, we

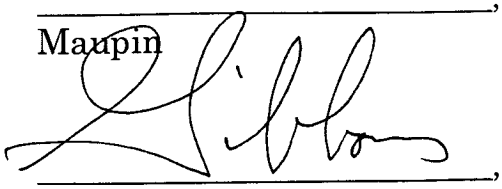
ORDER the petition DENIED.[12]



_____, J.
Rose



_____, J.
Maupin



_____, J.
Gibbons

cc: Hon. Dan L. Papez, District Judge
Steve Michael Cox
Piscevich & Fenner
White Pine County Clerk

---

[12]See NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.