IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA LOUISE TAYLOR AND TERRANCE TAYLOR,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, THE HONORABLE ALLAN R. EARL, DISTRICT JUDGE, AND THE HONORABLE VALERIE ADAIR, DISTRICT JUDGE,
Respondents,
and
NATHAN NIXON,
Real Party in Interest.

No. 41738

ORDER DENYING PETITION FOR WRIT OF MANDAMUS, PROHIBITION OR CERTIORARI

This original petition for a writ of mandamus, prohibition, or certiorari challenges a district court order that denied petitioners' motion to strike a trial de novo request. Real party in interest Nathan Nixon sued petitioner Sandra Taylor for injuries sustained in an automobile accident. The case proceeded to the court-annexed arbitration program, and an arbitration hearing was held. The arbitrator found in favor of Taylor, and served the parties with the arbitration award via U.S. mail on May 21, 2002. Nixon filed a trial de novo request on June 26, 2002.

In the district court, Taylor moved to strike Nixon's trial de novo request as untimely.[1] Nixon opposed the motion, filing an affidavit

[1]See NAR 18 (stating that a party must request a trial de novo within thirty days after the arbitration award is served on the parties); see also Custom Cabinet Factory of N.Y. v. Dist. Ct., 119 Nev. ___, 62 P.3d 741 (2003) (holding that three-day mailing period and non-judicial days may extend the thirty-day period for requesting a trial de novo).

from his attorney that the attorney did not receive the arbitration award mailed to him. The district court denied the motion, implicitly concluding that Nixon did not receive the arbitration award as served by the arbitrator.

NRS 47.250(13) states that there is a rebuttable presumption that a "letter duly directed and mailed was received in the regular course of the mail." Whether a party actually received a mailed document is a factual determination for the district court.[2]

The district court's conclusion that Nixon's attorney's affidavit was sufficient to defeat the presumption in NRS 47.250(13) was not an arbitrary or capricious exercise of discretion,[3] nor did the district court act without, or in excess of its jurisdiction.[4] Accordingly, we deny the petition.

It is so ORDERED.

Becker, J.
Becker

Shearing, J.
Shearing

Gibbons, J.
Gibbons

---

[2]See Quilici v. Thompson, 61 Nev. 118, 122, 119 P.2d 710, 711-12 (1941); Zugel v. Miller, 99 Nev. 100, 659 P.2d 296 (1983); Mullen v. Braatz, 508 N.W.2d 446 (Wis. Ct. App. 1993).

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

[4]See NRS 34.020; Dangberg Holdings v. Douglas Co., 115 Nev. 129, 978 P.2d 311 (1999); NRS 34.320.

cc: Hon. Allan R. Earl, District Judge
Hon. Valerie Adair, District Judge
Joseph J. Purdy
Delanoy Schuetze & McGaha, P.C.
Clark County Clerk