

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

Court of Appeals of New Mexico
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Filing Date: **September 24, 2026**



Mark Reynolds

No. A-1-CA-41990

BRYCE FRANKLIN,

Plaintiff-Appellant,

v.

RONALD MARTINEZ,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

James T. Martin, District Court Judge

Bryce Franklin

Eloy, AZ

Pro Se Appellant

New Mexico Corrections Department

Brenden J. Murphy, Deputy General Counsel

Santa Fe, NM

for Appellee

OPINION

WRAY, Judge.

{1} Plaintiff Bryce Franklin, an inmate at the Southern New Mexico Correctional Facility, sought the return or replacement of his confiscated personal property and brought a petition for a writ of replevin in magistrate court against the then-warden of the facility, Defendant Ronald Martinez, and the New Mexico Corrections Department.¹ Citing lack of jurisdiction, the magistrate court rejected the petition and accompanying application to receive free process. The district court affirmed the dismissal, based on NMSA 1978, § 35-3-3 (2001), which provides that a magistrate court “has no jurisdiction in a civil action . . . against public officers for misconduct in office,” § 35-3-3(C)(2), or “to grant writs of injunction, habeas corpus or extraordinary writs,” § 35-3-3(C)(6). Plaintiff appeals, and Defendant separately argues that he has not been properly served. We conclude that Section 35-3-3(C) does not limit the magistrate court’s jurisdiction over Plaintiff’s petition. We further conclude that the service issue is not yet ripe for our review. We therefore reverse and remand the matter to the magistrate court with instructions.

¹In the initial petition in magistrate court, the Department of Corrections was included as a defendant and the request for free process refers to “Ronald Martinez, et al.” The Department of Corrections has not since been included in the caption as a Defendant, including in Plaintiff’s appeals to the district court. This opinion therefore refers only to Defendant Martinez.

1 **BACKGROUND**

2 {2} In the petition, Plaintiff asserted that he was transferred to the Southern New
3 Mexico Correctional facility on July 24, 2023. Upon arrival, he contends that his
4 property was inventoried, and his “video game [console] and yoga mat were
5 confiscated because they were not sold by Union Supply” and a pair of “shoes were
6 confiscated because they were gray.”

7 {3} On August 9, 2023, Plaintiff attempted to file a verified petition for writ of
8 replevin in conjunction with an application for free process in the Doña Ana
9 Magistrate Court, seeking the return of his property. The magistrate court, citing lack
10 of jurisdiction, did not assign a case number, rejected the petition, and denied the
11 application for free process. Plaintiff filed a notice of appeal in district court. The
12 district court “denied” the appeal on the grounds that the magistrate court’s order
13 denying free process did not involve an appealable issue. Plaintiff appealed the
14 district court’s denial to this Court. While the appeal in this Court was pending, the
15 Office of General Counsel for the Department of Corrections filed a limited special
16 entry of appearance on behalf of Defendant in the district court to assert that Plaintiff
17 had not properly served Defendant and therefore, had not established personal
18 jurisdiction. This Court subsequently remanded the matter to the district court
19 because the denial of free process based on lack of jurisdiction was a final
20 determination and therefore appealable. On remand, the district court cited Section

35-3-3(C) and affirmed the magistrate court’s conclusion that it lacked jurisdiction. Plaintiff again appeals.

DISCUSSION

{4} Plaintiff argues that Section 35-3-3(C) does not limit the magistrate court’s subject matter jurisdiction over his petition for writ of replevin. Defendant does not address these arguments because he contends that service of process was ineffective under Rule 2-202 NMRA and Rule 1-004 NMRA, and therefore “there is no personal jurisdiction over [him].” *Cf. Barreras v. N.M. Motor Vehicle Div.*, 2005-NMCA-055, ¶ 6, 137 N.M. 435, 112 P.3d 296 (explaining “that the absence of service . . . would ordinarily preclude [a] court from binding [a defendant] by any judgment”). We review questions of law, such as subject matter jurisdiction and sufficiency of service of process, de novo. *See Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 10, 142 N.M. 786, 171 P.3d 300 (“[T]he question of whether a trial court has jurisdiction in a particular case is a question of law that we review de novo.”); *Capco Aquisub, Inc. v. Greka Energy Corp.*, 2008-NMCA-153, ¶ 28, 145 N.M. 328, 198 P.3d 354 (“The determination of whether a court has personal jurisdiction over a party is a question of law that is reviewed de novo.” (emphasis, internal quotation marks, and citation omitted)). We agree with Plaintiff that Section 35-3-3(C)(2) and (6) do not limit the magistrate court’s jurisdiction over Plaintiff’s petition for replevin against Defendant. Importantly, our holding is limited to interpretation of Section 35-3-

1 3(C)(2) and (6), and we do not purport to otherwise address the merits of Plaintiff's
2 petition.

3 **I. Magistrate Court Jurisdiction Under Section 35-3-3(C)**

4 {5} Section 35-3-3(C)(2) states that a magistrate court has no jurisdiction in civil
5 actions “against public officers for misconduct in office.” Section 35-3-3(C)(6)
6 further denies a magistrate court jurisdiction to grant “writs of injunction, habeas
7 corpus, or extraordinary writs.” Plaintiff contends that (1) Defendant, a prison
8 warden, is not a public officer and the allegations do not implicate “misconduct in
9 office”; and (2) writs of replevin fall under magistrate court jurisdiction. As we
10 explain, we agree that Defendant is not a public officer. We therefore do not address
11 the definition of “misconduct in office,” and conclude that a writ of replevin is not
12 one of the writs over which the magistrate courts lack jurisdiction.

13 **A. Public Officer**

14 {6} New Mexico law has wrestled with defining “public officer” in various
15 contexts. Some cases and statutes have focused on whether the position is elected or
16 appointed. *Cf. Webb v. Vill. of Ruidoso Downs*, 1994-NMCA-026, ¶¶ 8-9, 117 N.M.
17 253, 871 P.2d 17 (concluding that in the context of merit systems, public employees
18 were not public officers because public officers are generally appointed or elected
19 to a definite term of office); NMSA 1978, § 10-4-1 (2018) (defining “local officers”
20 who are subject to removal as “[a]ny officer of a political subdivision of the state

1 elected by the people and any officer appointed to fill out the unexpired term”);
2 NMSA 1978, § 10-16-2(I) (2011) (defining “public officer” for the Governmental
3 Conduct Act as “any elected or appointed official or employee of a state agency or
4 local government agency who receives compensation”); NMSA 1978, § 30-1-12(I)
5 (1963) (defining “public officer” for the Criminal Code as “any elected or appointed
6 officer of the state or any of its political subdivisions, and whether or not [they]
7 receive[] remuneration for [their] services”). Other authority has considered a
8 number of factors, which reduce to whether the position was created by statute and
9 whether the person who fills the position was lawfully appointed or elected. *See*
10 *Pollack v. Montoya*, 1951-NMSC-056, ¶¶ 4, 12, 55 N.M. 390, 234 P.2d 336
11 (determining for the purposes of venue whether a person was a state officer); *see*
12 *also State ex rel. Gibson v. Fernandez*, 1936-NMSC-027, ¶¶ 10, 24, 40 N.M. 288,
13 58 P.2d 1197 (determining that a special tax attorney was only a public employee
14 because to be a public officer, “sovereign power must be vested in the position by
15 the Legislature”); *State v. Quinn*, 1930-NMSC-065, ¶ 12, 35 N.M. 62, 290 P. 786
16 (“When considering whether a person is a public officer, we are not to be controlled
17 merely by what acts [they] perform[], but we must know what acts [they are]
18 required by law or rules of the government to perform.”). In *Lacy v. Silva*, 1972-
19 NMCA-064, 84 N.M. 43, 499 P.2d 361, this Court explained that the position “must
20 possess a delegation of a portion of the sovereign power of government, to be

exercised for the benefit of the public.” *Id.* ¶ 5 (internal quotation marks and citation omitted). That “sovereignty,” meant “freedom from external control” as demonstrated by “autonomy, independence; [and] controlling influence.” *Id.* ¶ 6 (internal quotation marks and citation omitted).

{7} Defendant’s position, warden of a state prison, falls under the statutes that govern the New Mexico Corrections Department (NMCD). *See* NMSA 1978, § 33-1-2(E) (2005) (noting that a “warden” is “the administrative director of a correctional facility”). While a warden has some supervisory authority over a specific prison facility, *see* NMSA 1978, § 33-2-15 (1977), it is the NMCD that “shall make such rules and regulations” and “exercise a general superintendence and control over” the penitentiaries, NMSA 1978, § 33-2-10 (1977), and resolve reports of “misconduct on the part of the warden or any of the other employees,” NMSA 1978, § 33-2-11(A) (1990). The only positions created by our Legislature are the secretary of corrections, who oversees and “adopt[s] rules and regulations” for the NMCD, NMSA 1978, § 33-1-6 (1981), and the director of corrections who is the “administrative head of the division” and “serve[s] at the pleasure of the secretary” of corrections, NMSA 1978, § 33-1-5 (1977). The secretary is “appointed by the governor with the consent of the senate,” NMSA 1978, § 9-3-4(A) (1981), and the director is appointed by the secretary, “with the approval of the governor,” NMSA 1978, § 9-3-6 (1981). The secretary has “every power expressly enumerated in the laws, whether granted to the

1 secretary of the department or any division of the department, except where authority
2 conferred upon any division is explicitly exempted from the secretary's authority by
3 statute." NMSA 1978, § 9-3-5(B) (2004); *see* § 33-2-11(A) (granting the secretary
4 subpoena power and authority to compel attendance and administer oaths in
5 proceedings involving misconduct on the part of the warden).

6 {8} The warden is neither appointed nor elected, nor does the warden appear to be
7 imbued with any sovereign power. Instead, the secretary and the director are
8 appointed, and NMCD has control and oversight over the warden. We therefore
9 conclude that the warden is not a public officer. For that reason, the magistrate
10 court's jurisdiction is not limited by Section 35-3-3(C)(2), and we need not
11 separately address whether Plaintiff alleged "misconduct in office."

12 **B. Magistrate Court Jurisdiction Over Specific Writs**

13 {9} In the order affirming dismissal of the petition, the district court alternatively
14 noted that the magistrate court did not have jurisdiction over writs of injunction,
15 habeas corpus, or extraordinary writs. *See* § 35-3-3(C)(6). Plaintiff challenges this
16 conclusion. As we have noted, our Legislature has explicitly provided for magistrate
17 court jurisdiction to issue writs of replevin. *See* NMSA 1978, § 35-11-1 (1975). We
18 decline to construe Section 35-3-3(C)(6) to undermine jurisdiction that is otherwise
19 granted in a separate statutory provision. We are therefore doubtful that writs of
20 replevin are prohibited writs under Section 35-3-3(C)(6). *See* NMSA 1978, § 44-1-

1 (1884) (describing writs of habeas corpus as available to “[e]very person
2 imprisoned or otherwise restrained of [their] liberty, except in the cases in the
3 following section specified,” in order “to obtain relief from such imprisonment or
4 restraint, if it proves to be unlawful”); *Lujan Grisham v. Romero*, 2021-NMSC-009,
5 ¶ 15, 483 P.3d 545 (describing extraordinary writs as employed “only in exceptional
6 circumstances: where the remedy by appeal seems wholly inadequate or where
7 otherwise necessary to prevent irreparable mischief, great, extraordinary, or
8 exceptional hardship, or costly delays and unusual burdens of expense” (text only)
9 (citation omitted)); *Munis v. de Herrera*, 1862-NMSC-003, ¶ 6, 1 N.M. 362
10 (explaining that the writ of replevin was an adequate remedy at law, which
11 foreclosed injunctive relief); *Ross v. Overton*, 1924-NMSC-043, ¶ 2, 29 N.M. 651,
12 226 P. 162 (determining that because the legal remedy for replevin was inadequate,
13 “the equitable remedy of injunction [was] available”). The Legislature has afforded
14 magistrate courts jurisdiction over replevin actions, after a judgment, *see* § 35-11-1,
15 to “determine the right to the immediate possession of the property, and damages for
16 its unlawful caption or detention,” *Johnson v. Terry*, 1944-NMSC-035, ¶ 10, 48
17 N.M. 253, 149 P.2d 795. We therefore conclude that Section 35-3-3(C)(6) does not
18 limit the magistrate court’s jurisdiction over actions for replevin.

II. Defendant's Arguments and Remand

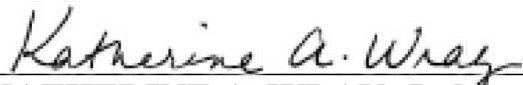
{10} Defendant argues that personal jurisdiction is absent because Plaintiff has not effectuated service of process pursuant to Rule 2-202(A). Rule 2-202(A) requires that “[o]n receipt of a complaint and payment of the docket fee,” the magistrate court judge or clerk “shall docket the action, issue a summons, and deliver it to the plaintiff or the plaintiff’s attorney, who shall be responsible for prompt service of the summons and a copy of the complaint.” In the present case, the petition was rejected by the magistrate court and no summons issued that Plaintiff could serve. We therefore conclude that because Plaintiff has not yet had an opportunity to serve the petition, the question of proper service is not yet ripe. *See City of Sunland Park, v. Macias*, 2003-NMCA-098, ¶ 23, 134 N.M. 216, 75 P.3d 816 (“The ripeness doctrine exists to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” (internal quotation marks and citation omitted)).

CONCLUSION

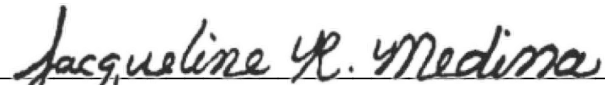
{11} We reverse and remand to the magistrate court with instructions to consider the application for free process, docket the petition, and issue a summons. *See* Rule 2-202(A); *see also* NMSA 1978, § 35-11-2 (1968) (“All laws and procedures governing magistrate courts apply to actions of replevin in the magistrate court except as otherwise provided by law.”). *Compare* § 35-11-1 (requiring a judgment

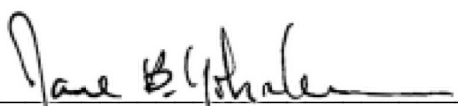
1 to be entered before a magistrate court may issue a writ of replevin), *with Citizens*
2 *Bank, Farmington v. Robinson Bros. Wrecking*, 1966-NMSC-114, ¶¶ 2, 9, 76 N.M.
3 408, 415 P.2d 538 (approving service of an issued writ of replevin, instead of a
4 summons, in actions for replevin filed in district court where service of the writ was
5 necessary for jurisdiction).

6 {12} **IT IS SO ORDERED.**

7 
8 **KATHERINE A. WRAY, Judge**

9 **WE CONCUR:**

10 
11 **JACQUELINE R. MEDINA, Chief Judge**

12 
13 **JANE B. YOHALEM, Judge**