

IN THE SUPREME COURT OF THE STATE OF NEVADA

FAYLEEN SCHWARTZ,  
Appellant,  
vs.  
IMPERIAL PALACE, INC., D/B/A  
IMPERIAL PALACE HOTEL &  
CASINO, A NEVADA CORPORATION,  
Respondent.

No. 43438

**FILED**

OCT 21 2005

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting respondent's motion to dismiss appellant's complaint for failure to effect timely service under NRCP 4(i). Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

In Scrimmer v. District Court,<sup>1</sup> this court outlined ten factors to guide the district court in determining whether a party has shown good cause for failing to effect timely service under NRCP 4(i). Absent a showing that there was good cause for the failure to timely serve the complaint, the district court is obligated to dismiss the case.<sup>2</sup> The

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<sup>1</sup>116 Nev. 507, 998 P.2d 1190 (2000).

<sup>2</sup>Id. at 512-13, 998 P.2d at 1193; former NRCP 4(i). Although NRCP 4 was amended, effective January 1, 2005, the order dismissing the underlying case was entered before the amendment took effect; thus, the former rule applies.

determination as to whether good cause has been shown rests within the district court's discretion.<sup>3</sup>

Based on the briefs and other documents before us, it appears that several of the Scrimmer factors support appellant's contention that her complaint should not have been dismissed. The statute of limitations on appellant's cause of action has run; thus, the dismissal of the underlying complaint would bar appellant from re-filing her lawsuit against respondent. Moreover, it does not appear that respondent was prejudiced by appellant's delay in serving her complaint. Indeed, respondent does not even argue that it has been prejudiced. Finally, regardless of whether service was made 23 days after the 120-day period provided in NRCP 4(i) expired or 2 days beyond the expiration of that period, the delay in service does not represent an extreme delay beyond the 120-day period.

As this court has previously stated, NRCP 4(i) was never intended to become an automatic sanction when a plaintiff fails to serve the complaint within 120 days of filing.<sup>4</sup> Although the rule is meant to encourage the diligent prosecution of complaints, this court has recognized that public policy dictates that cases should be adjudicated on their merits.<sup>5</sup> Here, as the statute of limitations on appellant's cause of action

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<sup>3</sup>Scrimmer, 116 Nev. at 513, 998 P.2d at 1193-94.

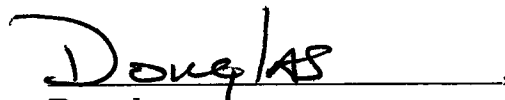
<sup>4</sup>Id. at 516, 998 P.2d at 1196.

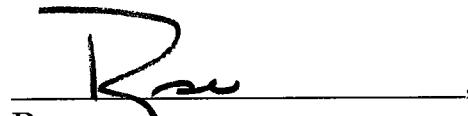
<sup>5</sup>Id. at 516-17, 998 P.2d at 1196.

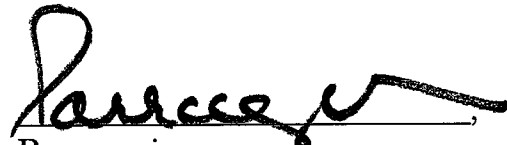
has now run, dismissing this case for failure to effect timely service on respondent would prevent this case from ever being decided on the merits.

Based on the foregoing analysis, we conclude that the district court abused its discretion in granting respondent's motion to dismiss. We therefore reverse the district court's order granting the motion and remand this case to the district court for further proceedings.

It is so ORDERED.<sup>6</sup>

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Parraguirre

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Crockett & Myers  
Lewis Brisbois Bisgaard & Smith, LLP  
Clark County Clerk

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<sup>6</sup>Under NRAP 34(f), we conclude that oral argument is not warranted in this case.