

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMAL AMASSNAOU AND KHADIJA
AMASSNAOU,
Appellants,
vs.
RONALD CARTIER AND BEULAH
CARTIER,
Respondents.

No. 44849

FILED

JAN 11 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellant's complaint for failure to serve process under NRCP 4(i) in an automobile accident personal injury case. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

The parties were involved in an automobile accident on August 27, 2001. On August 26, 2003, the day before the statute of limitations expired,¹ appellants filed their complaint for personal injuries. Appellants admit that they first attempted (unsuccessfully) to serve respondents with process through the Department of Motor Vehicles (DMV), under NRS 14.070, on December 1, 2003, less than a month before the 120-day period for service under NRCP 4(i) expired. Only thereafter,

¹See NRS 11.190(4)(e).

on December 11, 2003, did appellants attempt to personally serve respondents. Appellants further learned that respondents were not at the address they provided on the police accident report, and therefore, personal service was not successful. On August 23, 2004, respondents moved to dismiss the complaint for failure to timely serve process under NRCP 4(i). After a hearing, the district court granted the motion and this appeal followed.²

This court reviews, for an abuse of discretion, a district court's order granting a motion to dismiss for failure to effect timely service of process.³ Dismissal for failure to timely complete service of the summons and complaint is mandatory unless there is a legitimate excuse for having failed to serve within 120 days of the date that the complaint is filed.⁴ The determination of good cause for failing to timely serve the summons and complaint after they are filed is within the district court's discretion.⁵ Further, under Scrimmer v. District Court,⁶ when determining whether a

²Although the district court subsequently considered and denied appellants' motion for reconsideration of its order dismissing the complaint, the order denying reconsideration is not appealable. See Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

³Abreu v. Gilmer, 115 Nev. 308, 312-13, 985 P.2d 746, 749 (1999).

⁴NRCP 4(i).

⁵See Scrimmer v. Dist. Ct., 116 Nev. 507, 998 P.2d 1190 (2000).

⁶Id. at 516, 998 P.2d at 1190.

plaintiff had good cause for failing to timely serve the summons and complaint, the district court should consider ten factors. The record before us demonstrates that only one Scrimmer factor weighs heavily in appellants' favor, as the limitations period has expired. Moreover, weighing heavily against appellants is another factor, since the record before us reflects little or no diligence in attempting service.

Further, with respect to substitute service, in Browning v. Dixon,⁷ we held that before resorting to substitute service through the DMV, a plaintiff must conduct a diligent search to determine whether the defendant has actually left the state or cannot be located within the state. Only when the plaintiff demonstrates that, after due diligence, the defendant cannot be found within the state, may the plaintiff effect service through the DMV under NRS 14.070(2).⁸ Here, by appellants' own admission, they first attempted service through the DMV, without trying to personally serve respondents. Appellants then made only one attempt to personally serve respondents. Appellants further admit that they attempted to personally serve respondents either after the DMV service or, at best, contemporaneously with the DMV service. This single attempt at service, conducted after and not prior to the attempted service through

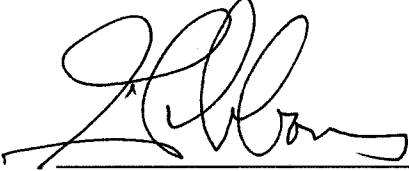
⁷114 Nev. 213, 954 P.2d 741 (1998).


⁸Id.

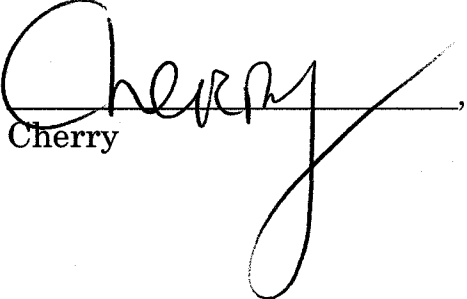
the DMV, falls well short of the diligent search required before service may be properly effected through the DMV.

Having considered these and the remaining Scrimmer factors, we conclude that the district court did not abuse its discretion in granting respondents' motion to dismiss the complaint. Accordingly, we affirm the district court's order.

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Michelle Leavitt, District Judge
Lester H. Berkson, Settlement Judge
Law Office of Frank Sorrentino
Rawlings Olson Cannon Gormley & Desruisseaux
Atkin Winner Sherrod & Vames
Clark County Clerk