

IN THE SUPREME COURT OF THE STATE OF NEVADA

L. SEVILLE PARKS,  
Appellant,

vs.

DEBRA LIGHTSEY; THE STATE OF  
NEVADA; G. GIRARD; MELVIN BALLS;  
DR. MACARTHUR; JOSEPH  
BRACKBILL; DR. ROBINSON; KAREN  
BALENTINE; E.K. MCDANIEL;  
DWIGHT NEVEN; AND ADAM ENDEL,  
Respondents.

No. 46087

FILED

FEB 02 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a complaint alleging civil rights violations. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Appellant L. Seville Parks, an inmate at Ely State Prison (ESP), filed the present action on December 6, 2004, claiming violations of his civil rights by several ESP officials. Parks's complaint alleges that the ESP officials failed to provide him with adequate legal supplies and medical care, and subjected Parks to racial and sexual discrimination, among other constitutional violations.

Between December 6, 2004, and April 15, 2005, Parks filed three motions requesting additional copy work and time to serve the ESP officials. On May 19, 2005, the district court denied Parks's requests for additional copy work. However, after reminding Parks that NRCP 4 governed his action, and that NRCP 4(i) normally required service of process within 120 days, the district court granted Parks an additional 45 days to complete service of process. After Parks filed another motion for an extension of time but failed to serve the ESP officials within the period

dictated by the court's May 19, 2005, order, the district court dismissed Parks's complaint without prejudice. This appeal followed.

On appeal, Parks states that he initially attempted to serve the ESP officials by sending summonses and a copy of his complaint to the office of the attorney general, but the attorney general neither served the officials with the documents nor returned the documents to him. According to Parks, this amounted to misconduct on the part of the office of the attorney general.<sup>1</sup>

NRCP 4(i) provides "that service of the complaint and summons must be made within 120 days, or the action will be dismissed without prejudice, unless a plaintiff can show good cause why service was not made during the 120-day period."<sup>2</sup> Under NRCP 4(i), "[d]ismissal is mandatory unless there is a legitimate excuse for failing to serve within the 120 days[.]" but "[t]he determination of good cause is within the district court's discretion."<sup>3</sup> Appropriate considerations in determining whether good cause exists include

(1) difficulties in locating the defendant, (2) the defendant's efforts at evading service or concealment of improper service until after the 120-day period has lapsed, (3) the plaintiff's

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<sup>1</sup>In addition, Parks argues that he has been denied adequate access to legal materials and the courts, and that the district court erred in denying his requests for additional copy work. Parks further contends that it was error for the district court to refuse his request to have legal counsel appointed in his case. We have considered these arguments and we conclude that they are without merit.

<sup>2</sup>Scrimmer v. Dist. Ct., 116 Nev. 507, 512, 998 P.2d 1190, 1193 (2000).

<sup>3</sup>Id. at 512-13, 998 P.2d at 1193-94.

diligence in attempting to serve the defendant, (4) difficulties encountered by counsel, (5) the running of the applicable statute of limitations, (6) the parties' good faith attempts to settle the litigation during the 120-day period, (7) the lapse of time between the end of the 120-day period and the actual service of process on the defendant, (8) the prejudice to the defendant caused by the plaintiff's delay in serving process, (9) the defendant's knowledge of the existence of the lawsuit, and (10) any extensions of time for service granted by the district court.<sup>4</sup>

However, this court has also emphasized that no single consideration is controlling.<sup>5</sup>

In this case, the district court recognized that Parks, although not an attorney, is an experienced litigator who was well aware of the rules for service of process. In addition, the district court provided Parks with an additional 45 days in which to serve the ESP officials named in the complaint. When Parks failed to meet the extended deadline by more than 30 days, and instead filed another motion for an extension of time, the district court dismissed Parks's complaint for failure to serve process under NRCP 4(i).

We conclude that the district court did not abuse its discretion in dismissing Parks's complaint without prejudice. More than 240 days, or double the number of days set forth by NRCP 4(i), passed between the date Parks first filed his complaint and the date the district court dismissed his complaint for failure to serve process. The district court was

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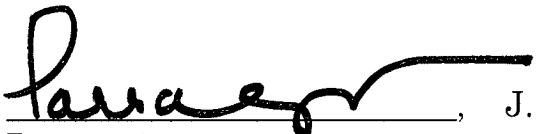
<sup>4</sup>Id. at 516, 998 P.2d at 1195-96.

<sup>5</sup>Id. at 516, 998 P.2d 1195.

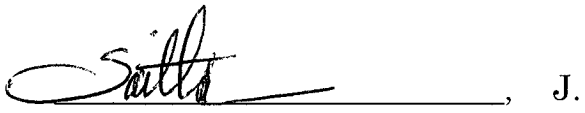
amenable to Parks's needs, granting an initial extension of 45 days. While Parks may have been unable to make additional copies of his summonses and complaint during that time, he had more than ample opportunity to hand write the necessary documents and serve them on the ESP officials. In addition, the office of the attorney general had no duty under NRCP 4 to return documents sent to it by Parks, and thus, Parks's argument regarding alleged misconduct by that office fails.

The district court did not abuse its discretion in dismissing Parks's case without prejudice. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Steve L. Dobrescu, District Judge  
L. Seville Parks  
Attorney General Catherine Cortez Masto/Carson City  
White Pine County Clerk