

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBUQUEREK DEFERNANDES,
Appellant,

vs.

JESS AQUINO MURILLO,
INDIVIDUALLY; AND MARJORIE
RAMOS, INDIVIDUALLY,
Respondents.

No. 51322

FILED

JUN 19 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellant's complaint in a personal injury action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

The parties in this case were involved in an automobile accident. Subsequently, appellant Albuquerque Defernandes filed a personal injury action against respondents Jess Aquino Murillo and Marjorie Ramos. Defernandes concedes that Ramos was never served with a summons and complaint. With respect to Murillo, a process server for Defernandes left a copy of the summons and complaint with someone named William, an alleged roommate of Murillo, at a residence owned by Murillo—7721 Rathburn Avenue, Las Vegas, Nevada. An affidavit from the process server indicates that the process server spoke with William, who told him that "he lived there" and that Murillo was not home at the moment. Murillo and Ramos eventually filed a motion to dismiss Defernandes's complaint without prejudice, alleging that they were never properly served with the complaint within the 120-day period required under NRCP Rule 4(i), or within the 60-day extension given by the district court. In support of the motion to dismiss, Murillo submitted an affidavit attesting that although he and his wife own the property at Rathburn

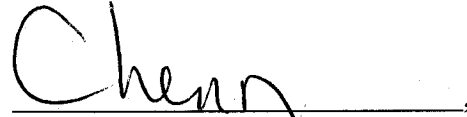
Avenue, they have not lived there since August 2006, and that the property was currently leased to a tenant. Defernandes opposed the motion and, after a hearing, the district court granted the motion to dismiss. This appeal followed.

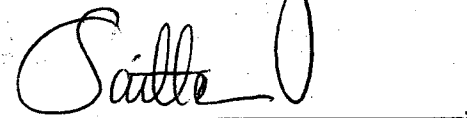
On appeal, Defernandes challenges the dismissal of his complaint for failing to affect proper service on Ramos and Murillo. With respect to Ramos, Defernandes concedes that Ramos has not been served in this matter. Nonetheless, highlighting the fact that Ramos had retained counsel, Defernandes maintains that Ramos's counsel never attested that she would not accept service in this matter for her client. With respect to Murillo, Defernandes maintains that he properly served Murillo by leaving a copy of the summons and compliant with a man named William at—7721 Rathburn Avenue, Las Vegas, Nevada.

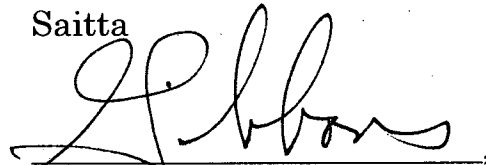
NRCP 4(i) requires a plaintiff to serve the defendants with summonses and copies of the complaint within 120 days of filing the complaint. Unless the plaintiff files a motion for an extension of time in which to serve process and demonstrates good cause as to why process was not served within the required time, the district court must dismiss without prejudice any action in which process has not been served within the 120-day deadline. This court reviews the district court's dismissal of a complaint for failure to serve process for an abuse of discretion. Abreu v. Gilmer, 115 Nev. 308, 985 P.2d 746 (1999). Here, in dismissing Defernandes's complaint, the district court found that Defernandes failed to effect proper service on Ramos and Murillo within either the NRCP 4(i) 120-day period or the 60-day extension period previously granted by the district court. Having reviewed the record and the parties' briefs on appeal, we conclude that the district court did not abuse its discretion in

dismissing Defernandes's complaint for failure to serve process. Id.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jessie Elizabeth Walsh, District Judge
Gazda & Tadayon
Law Offices of Chad M. Golightly
Kravitz, Schnitzer, Sloane, Johnson & Eberhardy, Chtd.
Eighth District Court Clerk