

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANET WILLIAMS,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
DOUG SMITH, DISTRICT JUDGE,  
Respondents,

and

EFRAIN FELIX, INDIVIDUALLY; AND  
SARA FELIX, INDIVIDUALLY,  
Real Parties in Interest.

No. 58749

FILED

DEC 13 2011

TRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Angerson*  
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying petitioner's motion to dismiss a tort action for failure to timely effect service of process. Real parties in interest have filed an answer as directed, and petitioner has filed a reply.

A writ of mandamus may be issued "to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station," International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); NRS 34.160, if the petitioner does not have a plain, speedy, and adequate remedy at law. NRS 34.170. Although this court will generally decline to consider writ petitions challenging district court orders denying motions to dismiss, we will consider such petitions in some instances if no factual dispute exists and the district court was obligated to dismiss the action pursuant to clear authority. International Game Tech., 124 Nev. at 197-98, 179 P.3d at 558-59

(internal quotations omitted). Petitioner bears the burden of demonstrating that our extraordinary intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).


NRCP 4(i) requires the district court to dismiss an action as to any defendant upon whom service of the summons and complaint is not made within 120 days after the filing of the complaint, unless the party who was required to serve process “shows good cause why such service was not made within that period.” A party filing a motion to enlarge the time to serve process after the service period has elapsed must also demonstrate good cause for failing to file a timely motion for an enlargement of time. Saavedra-Sandoval v. Wal-Mart Stores, 126 Nev. \_\_\_, \_\_\_, 245 P.3d 1198, 1201 (2010).


Here, after the expiration of the time that service was required to have been made, petitioner notified real parties in interest that service had never been properly effectuated. Three months later, real parties in interest filed a motion for an enlargement of time to serve process, asserting that they believed service was proper but that they were moving for an extension in an abundance of caution. Real parties in interest failed, however, to identify any reason for their delay in filing the enlargement motion. Thus, they did not establish good cause for their failure to file a timely motion for an enlargement of time, and the district court was required to deny the motion and to grant petitioner’s motion to dismiss the complaint. Id. at \_\_\_, 245 P.3d at 1201.

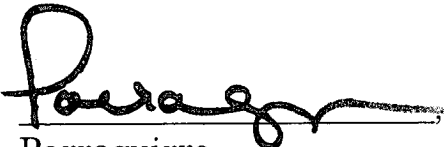
Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate the order granting real parties in interest’s motion

to enlarge the time to serve process and enter an order dismissing the underlying action.<sup>1</sup>

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

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

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

cc: Hon. Doug Smith, District Judge  
David L. Riddle & Associates  
Powell Litigation Group  
Eighth District Court Clerk

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<sup>1</sup>In light of this order, we deny as moot the motion to withdraw as counsel for real parties in interest.