

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCELO MAYOL,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
ALLAN R. EARL, DISTRICT JUDGE,  
Respondents,  
and  
JOSELIN MARTINEZ,  
Real Party in Interest.

No. 59471

**FILED**

JUL 27 2012

TRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying a motion to strike a complaint and declining to dismiss a tort action for failure to timely effect service of process. Real party in interest has filed an answer, as directed.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008), if the petitioner does not have a plain, speedy, and adequate remedy at law. See NRS 34.170; International Game Tech., 124 Nev. at 197, 179 P.3d at 558. Although this court will generally decline to consider writ petitions challenging district court orders denying motions to dismiss, we will consider such petitions 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.

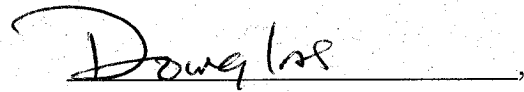
NRCP 4(i) requires the district court to dismiss an action as to any defendant upon whom service of the summons and complaint is not made within 120 days after the filing of the complaint, unless the party who was required to serve process “shows good cause why such service was not made within that period.” In order to properly serve process outside of the 120-day period, the party required to serve process must file a motion to enlarge the time for service. NRCP 4(i); Saavedra-Sandoval v. Wal-Mart Stores, 126 Nev. \_\_\_, \_\_\_, 245 P.3d 1198, 1200-01 (2010). Moreover, if the motion is made after the expiration of the 120-day period, the party must demonstrate good cause for failing to file a timely motion for an enlargement of time. Saavedra-Sandoval, 126 Nev. at \_\_\_, 245 P.3d at 1201.

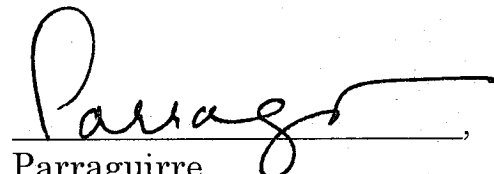
In certain situations, NRS 14.070 allows a plaintiff to serve substituted process on a defendant through the Department of Motor Vehicles (DMV). To utilize this method of service, the plaintiff must leave process and a fee with the director of the DMV, send notice of such service and a copy of the process by registered or certified mail to the defendant at the address on the accident report or at the best available address, obtain a return receipt either signed by the defendant or stating that the defendant refused delivery or could not be located, and file an affidavit of compliance with the return receipt attached. NRS 14.070. Here, real party in interest attempted to serve process pursuant to this statute, but did not complete the first step, leaving process with the director of the DMV, until 5 days after the 120-day period for serving process had expired, and she did not file a motion for an extension of the time to serve

process, as required by NRCP 4(i). Thus, the district court was obligated, pursuant to NRCP 4(i) and Saavedra-Sandoval, 126 Nev. at \_\_\_, 245 P.3d at 1201, to dismiss the complaint.

Accordingly, we

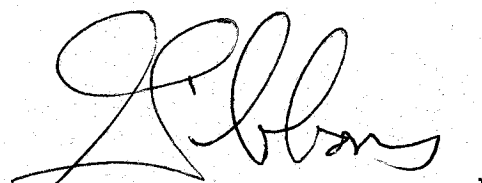
ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order denying the motion to strike and instead enter an order dismissing the underlying action.

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

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

GIBBONS, J. dissenting:

I would not intervene at this time.

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Allan R. Earl, District Judge  
Sarah A. Smith  
Gazda & Tadayon  
Law Offices of Chad M. Golightly  
Eighth District Court Clerk