

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOROTHY NEEDELMAN,

No. 35489

Appellant,

vs.

UNBELIEVABLE INC., AND RUFFIN
GAMING, LLC.,

Respondents.

FILED

AUG 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a personal injury complaint against a dissolved corporation for failure to properly serve the corporation.

Appellant Dorothy Needelman had an accident at the Frontier Hotel that led to her filing a complaint against respondent Unbelievable, Inc. During the time period between Needelman's accident and the filing of the lawsuit, Unbelievable was dissolved. Pursuant to NRCP 4, Needelman personally served Unbelievable's resident agent. Unbelievable filed a motion to dismiss for improper service. The district court granted Unbelievable's motion to dismiss, and Needelman now appeals.

When this court reviews orders granting motions to dismiss, it considers

whether the challenged pleading sets forth allegations sufficient to establish the elements of a right to relief. Pemberton v. Farmers Ins. Exchange, 109 Nev. 789, 792, 858 P.2d 380, 381 (1993). In making its determination, this court is to accept all factual allegations in the complaint as true. Id. at 792, 858 P.2d at 381 (citing Marcoz v. Summa Corporation, 106 Nev. 737, 739, 801 P.2d 1346, 1347 (1990)).¹

¹Nevada Power Co. v. Haggerty, 115 Nev. 353, 358, 989 P.2d 870, 873 (1999).

Statutory construction is a question of law that warrants independent appellate review and is reviewable by this court de novo.² Therefore, the trial court is given no deference for its statutory interpretation.³

Needelman asserts that, pursuant to NRCP 4, she properly served the resident agent with the summons and complaint within the 120-day time limit.⁴ Unbelievable contends that, pursuant to NRS 78.750, each of the persons listed as officers and directors for a dissolved corporation must be served and provided notice of the action. We agree with Needelman that she properly served Unbelievable's resident agent and that NRS 78.750 merely offers an alternative method of service of process to dissolved corporations.

Generally, the words in a statute are given their plain meaning.⁵ "[W]hen a statute is clear on its face, courts may not go beyond the statute's language to consider

²See In re Galvez, 115 Nev. 417, 990 P.2d 187 (1999); Carson City District Attorney v. Ryder, 116 Nev. 502, 998 P.2d 1186 (2000); see also Anthony Lee R., a Minor v. State, 113 Nev. 1406, 952 P.2d 1 (1997).

³See Ryder, 116 Nev. at 505, 998 P.2d at 1188.

⁴NRCP 4(d) provides, in pertinent part:

Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made by delivering a copy of the summons attached to a copy of the complaint as follows:

(1) If the suit is against a corporation formed under the laws of this state; to the president or other head of the corporation, secretary, cashier, managing agent, or resident agent thereof

⁵See Ryder, 116 at 505, 998 P.2d at 1188.

legislative intent."⁶ Also, this court will not go beyond the literal meaning of plain and unambiguous statutory language.⁷

This court has stated that the use of "may" in statutes is permissive and the use of "shall" is mandatory "unless the statute demands a different construction to carry out the clear intent of the legislature."⁸ NRS 78.750, entitled Service of process on corporations," provides:

1. In any action commenced against any corporation in any court of this state, service of process may be made in the manner provided by law and rule of court for the service of civil process.

2. Service of process on a corporation which has been continued as a body corporate under NRS 78.585 may be made by mailing copies of the process and any associated documents by certified mail, with return receipt requested, to:

(a) The resident agent of the corporation, if there is one; and

(b) Each officer and director of the corporation as named in the list last filed with the secretary of state before the dissolution or expiration of the corporation or the forfeiture of its charter.

The manner of serving process described in this subsection does not affect the validity of any other service authorized by law.

(Emphasis added.)

We conclude that nothing in the statute indicates the legislature intended mandatory rather than permissive interpretation of the word "may" as used in NRS 78.750. We therefore conclude that NRS 78.750 offers an alternative form of service of process for suing a dissolved corporation. Service may be made by certified mail, a process not authorized by NRCP 4. A party is only required to serve the officers and directors by certified mail when attempting

⁶Id.

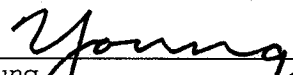
⁷In re Galvez, 115 Nev. at 420, 990 P.2d at 189.

⁸S.N.E.A. v. Daines, 108 Nev. 15, 19, 824 P.2d 276, 278 (1992) (quoting Givens v. State, 99 Nev. 50, 54, 657 P.2d 97, 100 (1983)).

service pursuant to NRS 78.750. Otherwise, service is effective if made pursuant to any other provisions of law. As such, we hold that service of process pursuant to NRCP 4 is still available to an individual who brings an action against a dissolved corporation.

Needelman properly served Unbelievable's resident agent pursuant to NRCP 4 within the designated time period. Therefore, the district court improperly granted Unbelievable's motion to dismiss. Accordingly, we


ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



Young J.



Leavitt J.



Becker J.

cc: Hon. James C. Mahan, District Judge
Todd D. Wittke
Cohen, Johnson, Day, Jones & Royal
Clark County Clerk