

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE ORLANDO PENA; AND  
VICTORIA PENA,  
Appellants,  
vs.  
BRIAN SHAUWN WHITE,  
Respondent.

No. 60895

**FILED**

**MAR 13 2014**

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 a tort action for failure to timely serve process. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

Under NRCP 4(i), a district court is required to dismiss a plaintiff's complaint if the plaintiff fails to serve a defendant with process within 120 days of filing the complaint and fails to move for an enlargement of the time for service. *See* NRCP 4(i) ("[T]he action shall be dismissed . . . unless the party on whose behalf such service was required files a motion to enlarge the time for service . . ."); *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. \_\_\_, \_\_\_, 245 P.3d 1198, 1200-01 (2010) (recognizing that NRCP 4(i) differs from its federal counterpart in that NRCP 4(i) not only requires a plaintiff to show good cause for failing to timely serve process, but also requires a plaintiff to file a motion to enlarge the time for service). Here, as appellants neither completed service of process on respondent within 120 days nor filed a motion to enlarge the time for service, the district court properly dismissed

appellants' complaint.<sup>1</sup> NRCP 4(i); *Saavedra-Sandoval*, 126 Nev. at \_\_\_, 245 P.3d at 1200 (explaining that this court reviews a district court order granting a motion to dismiss for failure to timely serve process for an abuse of discretion).

Nonetheless, appellants contend on appeal that the district court abused its discretion when ruling on their motion for reconsideration. See *AA Primo Builders, LLC v. Washington*, 126 Nev. \_\_\_, \_\_\_, 245 P.3d 1190, 1197 (2010) (indicating that a district court's decision on a motion for reconsideration is reviewable on appeal for an abuse of discretion). Specifically, they suggest that the district court should have construed their motion for reconsideration as a motion to enlarge the time for service and then found that appellants excusably neglected to file such a motion in a timely manner.<sup>2</sup> See NRCP 6(b) (permitting the district court to extend a specified time period after the time period has expired when the party seeking the extension

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<sup>1</sup>Appellants suggest in their reply brief that a motion to enlarge was unnecessary because they substantially complied with NRS 14.070(2)'s service requirements within 120 days of filing their complaint. We decline to consider this substantial-compliance argument, as it was not coherently raised in district court or in appellants' opening brief. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981); *Francis v. Wynn Las Vegas, LLC*, 127 Nev. \_\_\_, \_\_\_ n.7, 262 P.3d 705, 715 n.7 (2011). While appellants argued incorrectly that they fully complied with NRS 14.070(2), this is not the same as arguing that their purported substantial compliance with the statute should be deemed sufficient.

<sup>2</sup>Appellants also suggest that NRCP 6(b) provided the district court with authority to *sua sponte* enlarge their time for service. This argument is belied by NRCP 6(b)'s plain language. See NRCP 6(b) (indicating that the district court may extend a time period before it expires "if request therefor is made" or after it expires "upon motion").

demonstrates “excusable neglect” for not seeking an extension prior to the time period’s expiration).

We conclude that the district court was within its discretion to rule as it did on appellants’ motion for reconsideration. *AA Primo Builders, LLC*, 126 Nev. at \_\_\_, 245 P.3d at 1197. The record on appeal demonstrates that, despite appellants’ counsel’s office being restored to working condition by October 2010, appellants made no effort to file a motion to enlarge the time for service between October 2010 and when service was finally accomplished in June 2011. Thus, even if appellants’ motion for reconsideration were construed as a motion to enlarge the time for service, appellants provided the district court with no explanation as to why their failure to file such a motion between October 2010 and June 2011 was excusable. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Cherry, J.  
Cherry

cc: Hon. Allan R. Earl, District Judge  
Gazda & Tadayon  
Murchison & Cumming, LLC/Las Vegas  
Eighth District Court Clerk