

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDREA ST. JOHN, AN INDIVIDUAL,
Appellant,
vs.
THE MIRAGE CASINO-HOTEL, A
NEVADA CORPORATION; AND MGM
RESORTS INTERNATIONAL, A
DELAWARE CORPORATION,
Respondents.

No. 66835

FILED

DEC 16 2015

TRACIE K. LINDEMAN
CLERK, DISTRICT COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a complaint for failure to effect timely service of process pursuant to NRCP 4(i). Eighth Judicial District Court, Clark County; Susan Scann, Judge.

Appellant filed the underlying action on February 11, 2014. Although she filed the complaint in pro se, appellant had actually retained a California attorney to represent her. And it is undisputed that appellant neither served respondents with the complaint nor sought additional time to do so until after the applicable service period had expired on June 11, 2014. Instead, on July 2, 2014, appellant filed an affidavit in support of extending the service period before serving the complaint on respondents the next day.

Respondents then moved to dismiss the complaint for failure to effect timely service. Appellant, through newly retained Nevada counsel, opposed that motion and moved for an extension of time to serve respondents so as to render her July 3 service of the complaint timely. The district court ultimately determined appellant had failed to

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demonstrate good cause for failing to either serve respondents within NRCP 4(i)'s 120-day period or timely request additional time to do so. As a result, it dismissed appellant's complaint, and this appeal followed.

Pursuant to NRCP 4(i), if a plaintiff fails to serve the summons and complaint within 120 days of the filing of the complaint, the district court must dismiss that complaint unless the plaintiff files a motion to enlarge the service period and shows good cause why service was not completed within the 120-day period. Further, if the motion to extend the service period is not made within the 120-day period, that failure shall be considered in determining whether good cause exists to grant the requested extension. NRCP 4(i).

In the latter situation, the Nevada Supreme Court has held that "the rule creates a threshold question for the district court, requiring it to first evaluate whether good cause exists for a party's failure to file a timely motion seeking enlargement of time. Failure to demonstrate such good cause ends the district court's inquiry." *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 597, 245 P.3d 1198, 1201 (2010) (stating that "only upon a showing of good cause to file an untimely motion to enlarge time for service should the district court then apply [the good-cause factors set forth in *Scrimmer v. Eighth Judicial District Court*, 116 Nev. 507, 998 P.2d 1190 (2000)] for the delay in service").

On appeal, appellant maintains that she demonstrated good cause for not requesting additional time to serve respondents within the 120-day service period. In this regard, she first asserts that she was proceeding in pro se in the underlying case during this period, as her California counsel was not licensed to practice in Nevada, and that she was unaware of the 120-day service period and her California attorney

never informed her about this requirement. She further contends that she mistakenly believed that, since respondents were aware of the lawsuit, she need not complete service until her treatment and any settlement negotiations had been completed. In addition, appellant notes that she either lost or never received the summons, requiring her to have the summons reissued and to file an affidavit in support of extending the service period, albeit without an accompanying motion requesting such relief, before finally serving respondents.

In *Saavedra-Sandoval*, the Nevada Supreme Court noted that certain of the *Scrimmer* factors, specifically “those that would impede the plaintiff’s attempts at service and . . . could result in the filing of an untimely motion to enlarge the time to serve the defendant” with process may be pertinent to assessing whether good cause existed for failing to move to extend the service period before its expiration. *See Saavedra-Sandoval*, 126 Nev. at 597, 245 P.3d at 1201. With regard to these factors, although the record demonstrates respondents were aware of the pending lawsuit, appellant does not argue that respondent evaded service or tried to conceal improper service or that she attempted to serve respondents during this period. While the supreme court declared these factors to be nonexhaustive, it also held that any additional factors “should similarly relate to difficulties encountered by a party in attempting service that demonstrate good cause for filing a tardy motion.” *Id.*

Here, the additional factors that appellant contends impeded her ability to serve respondents or to timely request additional time to do so fail to demonstrate the required good cause. To the extent that appellant argues that her failure to comply with NRCP 4(i) should be excused because she was proceeding in pro se in the Nevada district court

and was unaware of the requirements of NRCP 4(i), the fact that a party is proceeding pro se does not excuse that party's failure to comply with applicable court rules. See *Lombardi v. Citizens Nat'l Tr. & Sav. Bank*, 289 P.2d 823, 824 (Cal. Ct. App. 1955).

Appellant's reliance on her California counsel's purported lack of familiarity with Nevada's service requirements and failure to inform her of the same¹ and her inability to locate the summons are likewise unavailing. In as much as these circumstances may have impeded her ability to comply with the requirements of NRCP 4(i), they all stem from appellant's own conduct in opting to hire California, rather than Nevada, counsel; failing to ensure that she had all necessary documents for serving the complaint in her possession; and failing to familiarize herself with the requirements set forth in the Nevada Rules of Civil Procedure.

¹Although appellant relies on *Domino v. Guaghan*, 103 Nev. 582, 747 P.2d 236 (1987), to argue good cause was demonstrated in light of her retention of California counsel who was purportedly not familiar with Nevada court rules and "ineffectively counseled" appellant, who maintains she wanted to be diligent in the prosecution of her case, that reliance is misplaced as *Domino* is distinguishable from the situation presented here. In *Domino*, the Nevada Supreme Court found good cause for failure to effect timely service where a party's out-of-state attorney asked an inexperienced Nevada attorney to effect service of process and service was later inhibited by, among other things, Nevada counsel's difficulties in communicating with out-of-state counsel and Nevada's counsel being absent from his office due to illness. *Id.* But here, California counsel was retained by appellant, not by another attorney, and appellant does not argue that counsel's illness or difficulties in communicating with counsel impeded her ability to comply with NRCP 4(i). Moreover, in *Domino*, counsel attempted to serve process within the applicable time period, whereas, in this case, appellant does not argue that she made any attempt at service or requesting additional time during the 120-day period. *Id.*

Appellant cites no authority demonstrating that a party can show good cause for failing to timely comply with the requirements for effecting service of process or to request additional time to do so when the asserted impediments to complying with these requirements were products of the party's own conduct. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that points not supported by salient authority or cogent argument need not be considered on appeal). Indeed, if a party could demonstrate good cause based on purported impediments created by the party's own actions or inaction, NRCP 4(i)'s requirements would have no real meaning as there would be few, if any, circumstances where good cause for failure to comply with these requirements could not be found.

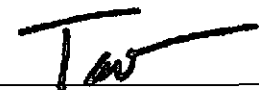
Finally, appellant points to other factors, such as her assertion that respondents were not prejudiced by the delay while she has suffered "extreme prejudice" by the dismissal of her complaint and the fact that she sought to correct her failure to comply with NRCP 4(i) shortly after the 120-day period had expired, as further demonstrating good cause. But *Saavedra-Sandoval* is clear that only factors demonstrating impediments to efforts to timely serve the complaint and request an extension of time or that reflect difficulties encountered in attempting service are pertinent to determining whether good cause exists for failing to timely move to extend the service period, 126 Nev. at 597, 245 P.3d at 1201, and the additional factors relied on by appellant do not fall within these categories.

Accordingly, for the reasons set forth above, we conclude that appellant's untimely motion to extend the service period was properly denied based on her failure to demonstrate good cause, and thus, the district court did not abuse its discretion in dismissing her complaint for

failure to timely effectuate service of process. *See id.* at 597, 245 P.3d at 1200 (noting that appellate courts review orders of dismissal for failure to timely serve process for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Susan Scann, District Judge
William C. Turner, Settlement Judge
Vohwinkel & Associates
Troy E. Peyton
William T. Martin
Eighth District Court Clerk