

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CONNIE LI,
Appellant,
vs.
BRYAN CHRISTIAN JUSTESEN,
Respondent.

No. 68912

FILED

AUG 10 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. Hedrich
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a torts action. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Appellant Connie Li filed the underlying action alleging negligence in connection with an automobile accident. Shortly before the NRCP 4(i) period for serving process expired, Li moved for an enlargement of time for service, summarily asserting that she and respondent Bryan Christian Justesen's insurer had continued to engage in negotiations after she filed the complaint and that her process server had begun to attempt service but was "still exercising due diligence." The district court summarily granted that motion without setting a new deadline for service.

Li subsequently filed an amended complaint to correct an error in Justesen's name in the original complaint, but she then personally served Justesen with the original complaint. Li later learned that she had served the incorrect complaint and moved for a second enlargement of time to serve Justesen with the amended complaint. In turn, Justesen moved to dismiss the action for failure to timely serve process. The district court granted the motion to dismiss over Li's opposition, concluding, as relevant here, that Li's first motion for an enlargement

should not have been granted, as it did not show good cause for failure to timely serve the summons and complaint. This appeal followed.

On appeal, Li argues that she established good cause for the initial enlargement by explaining that (1) settlement negotiations were ongoing, and (2) her process server had been unable to serve process because Justesen had moved without leaving a forwarding address.¹ Justesen counters that the district court properly dismissed the complaint because Li did not establish good cause in her first motion for an enlargement of time.

While settlement negotiations may support an enlargement of time to serve process under NRCP 4(i), *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 517, 998 P.2d 1190, 1196 (2000) (explaining that “[n]egotiations with an eye to settlement, undertaken in good faith in a serious effort to settle the litigation during the 120-day period, may constitute good cause for untimely service under NRCP 4(i)”), Li’s motion baldly asserted that settlement negotiations took place after she filed her complaint without providing any detail with regard to those negotiations. In particular, Li’s motion did not address the nature or extent of the settlement negotiations or otherwise demonstrate a good faith effort to settle the matter during the NRCP 4(i) period. *See id.* Similarly, the

¹Li also contends that the time for serving process restarted when she filed the amended complaint. That argument, however, lacks merit, as Li did not name a new party in the amended complaint. *See Lacey v. Wen-Neva, Inc.*, 109 Nev. 341, 349, 849 P.2d 260, 264-65 (1993) (concluding that the period to serve process ran from the filing of the plaintiff’s original complaint because the plaintiff did not name a new party in the amended complaint), *overruled in part on other grounds by Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 517, 998 P.2d 1190, 1196 (2000).

motion summarily stated that Li's process server was "still exercising due diligence," but it did not explain what the process server was actually doing in this regard or otherwise include any real explanation for the delay in service, such as by discussing her efforts to serve Justesen or by identifying any difficulties encountered in attempting to locate him.² See *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 598, 245 P.3d 1198, 1201-02 (2010) (concluding that the *Scrimmer* factors did not justify an enlargement of time where the plaintiff did not contend that she had experienced difficulty locating the person to be served, allege that the defendant evaded service, or use due diligence).

To support her argument that she established good cause, Li points on appeal to her process server's affidavit. But even assuming the affidavit was properly presented to and considered by the district court,³ it only showed that service had been attempted on Justesen once and that


²On appeal, Li argues that a motion for an enlargement of time does not require evidentiary support and that the factual allegations and arguments set forth in her motion were sufficient to demonstrate that an enlargement of time was warranted. While the Nevada Supreme Court has not addressed whether evidence is required to support a motion for an enlargement of time, we need not address this issue because, even if we were to accept her argument that evidentiary support is not required, the factual allegations and arguments presented in Li's motion did not demonstrate the required good cause for granting an enlargement of the time for service. We note that the Nevada Supreme Court has similarly not addressed what, if any, evidence is required to support a motion to dismiss based on a failure to timely effect service of process under NRCP 4(i). Because Li does not present any arguments regarding this issue, however, it is not before us on appeal.


³Li states that she filed the process server's affidavit on November 17, 2015, but the only copy of the affidavit in the record on appeal is in respondent's appendix and is not file-stamped.

Justesen had moved without leaving a forwarding address. The affidavit did not discuss any efforts made to locate and serve Justesen, explain why Li was unable to timely serve him, or otherwise establish good cause for untimely service under the *Scrimmer* factors. See *Scrimmer*, 116 Nev. at 516, 998 P.2d at 1195-96; see also *Saavedra-Sandoval*, 126 Nev. at 598, 245 P.3d at 1201-02.

Under these circumstances, the district court properly concluded in the order of dismissal that it should not have granted Li's original motion for an enlargement of time because she had not shown good cause for the delay of service. See *Scrimmer*, 116 Nev. at 513, 998 P.2d at 1193-94 (reviewing a district court's good cause determination for an abuse of discretion). As a result, we affirm the district court's dismissal of the underlying complaint under NRCP 4(i).⁴ See *id.* 116 Nev. at 512-13, 998 P.2d at 1193 ("Dismissal is mandatory unless there is a legitimate excuse for failing to serve within the 120 days.").

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

⁴In light of our conclusion that dismissal was required based on Li's initial failure to demonstrate good cause for an enlargement of time, we need not address her remaining arguments.

cc: Hon. Stefany Miley, District Judge
Persi J. Mishel, Settlement Judge
Law Offices of Eric K. Chen
Law Offices of Karl H. Smith
Eighth District Court Clerk