

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFREY H. HAAS,

Appellant,

vs.

ELIZABETH ALVARADO; ESTATE OF
ELIZABETH ALVARADO; DOMINGO
ALVARADO D/B/A ALVARADO
FREIGHT; ALVARADO FREIGHT,
INC.; DOMINGO SALAZA ALVARADO;
AND DOMINGO ALVARADO, JR.,
Respondents.

No. 69605

FILED

SEP 27 2016

TRACIE K. LINDAMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a torts action. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

After appellant, a California resident, filed his torts complaint against respondents, respondents filed a motion demanding that appellant deposit non-resident security pursuant to NRS 18.130(1) (allowing defendants to demand that non-resident plaintiffs deposit money with the court to secure the payment of costs and charges which may be awarded against non-resident plaintiffs). When appellant failed to make the security deposit within 30 days, respondents filed a motion to dismiss the complaint based on that failure. See NRS 18.130(4) (providing that a court may dismiss a complaint if the non-resident plaintiff fails to make the security deposit within 30 days from the service of notice that security is required).

Following the filing of the motion to dismiss, appellant deposited the security and filed an opposition to the motion to dismiss. In that document, appellant asserted that he had deposited the security and that dismissal would therefore be inappropriate under the Nevada Supreme Court's recent opinion in *Biscay v. MGM Resorts International*, 131 Nev. ___, ___, 352 P.3d 1148, 1150 (2015), which held that "it is an abuse of discretion for the district court to dismiss the case [under NRS 18.130(4)] if the plaintiff has filed the required security with the court clerk at any time before the court dismisses the case." Ultimately, the district court dismissed appellant's claim for failure to deposit the security within 30 days of receiving notice that the security was required. This appeal followed.


On appeal, appellant again asserts that the district court abused its discretion pursuant to the *Biscay* decision. We agree. The district court specifically found in its dismissal order that appellant had paid the required security, albeit not within 30 days of receiving notice to do so as mandated by NRS 18.130(4). Regardless of appellant's failure to make the deposit within the 30-day window, it was posted before the district court entered its dismissal order.¹ Accordingly, the district court abused its discretion in dismissing appellant's complaint for failure to

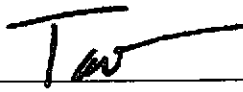
¹Although respondents assert that there is no proof in the record on appeal that appellant made the requisite security deposit, the district court's dismissal order specifically states that appellant posted the required security and the district court docket sheet reflects that a security bond was posted.

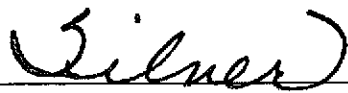
deposit the required security.² See *Biscay*, 131 Nev. at ___, 352 P.3d at 1150.

In light of the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²We decline respondents' invitation to affirm the dismissal for public policy reasons in order to discourage plaintiffs from ignoring a security demand until a motion to dismiss is filed. Any such determination is necessarily barred by *Biscay's* clear and unambiguous holding that, if security is posted before a dismissal order is entered, then dismissal for failure to post security is an abuse of discretion. See 131 Nev. at ___, 352 P.3d at 1150. Indeed, the delay in posting security was even more egregious in *Biscay*, where it was posted six months after receiving notice that security was required, than it was here, where security was posted two months after receiving notice that security would be required. See *id.* at ___, 352 P.3d at 1149 (stating that the plaintiff filed the required security deposit six months after receiving notice).

³Based on our decision herein, we need not address appellant's remaining appellate argument.

cc: Hon. Thomas L. Stockard, District Judge
Jeffrey H. Haas
Glogovac & Pintar
Churchill County Clerk