

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH L. MIZZONI,
Appellant,
vs.
THE STATE OF NEVADA, IN
RELATION TO THE NEVADA
DEPARTMENT OF CORRECTIONS,
Respondent.

No. 68808

FILED

SEP 27 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
Tracie K. Lindeman
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a civil rights action. Seventh Judicial District Court, White Pine County; Gary Fairman, Judge.

Appellant, an inmate, filed a civil rights action seeking redress from respondent for various alleged violations of his constitutional rights. Respondent sought to dismiss the complaint because the statute of limitations had passed and because appellant failed to effectuate timely service. In its order granting dismissal, the district court recognized that appellant failed to timely effectuate service of process, but ultimately dismissed the case based on the statute of limitations having run. Having considered the briefs and record on appeal, we affirm the district court's dismissal of appellant's complaint, but based on the failure to timely serve process rather than based on the statute of limitations having passed. See *Pack v. LaTourette*, 128 Nev. 264, 267, 271, 277 P.3d 1246, 1248, 1250

(2012) (affirming the dismissal of a complaint on an alternative basis than the district court, despite that court not addressing the issue in its order).

Nevada Rule of Civil Procedure 4(i) provides a party “120 days after the filing of the complaint” to complete service of process. Upon receiving the underlying complaint in this appeal, the district court granted appellant in forma pauperis status and allowed the complaint to be filed, but withheld the issuance of summonses and directed appellant to file points and authorities demonstrating that his claims had merit as appellant had previously been deemed a vexatious litigant. *See Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 59, 110 P.3d 30, 41-42 (2005) (allowing district courts to place restrictions on a party’s access to the courts if it is determined that that party is a vexatious litigant), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008). After appellant demonstrated that his complaint had merit, the district court issued summonses, and appellant later sought to extend the time to complete service. Thereafter, respondent filed a motion to dismiss in addition to an opposition to the extension request. In its order on those motions, the district court first found that the period in which to effect service began on the date that the court allowed summonses to issue. It then went on to find that appellant had not completed service in a timely manner and had not requested an extension within the 120-day period. Rather than dismiss the case based on the failure to serve, however, the

district court concluded that the statute of limitations had run on appellant's claims. This appeal followed.

On appeal, appellant asserts that his claims should not have been dismissed because the statute of limitations was tolled and because the district court should have granted his motion to extend the time for service because it was filed within the 120-day service period.¹ While appellant asserts, and the district court found, that NRCP 4(i)'s 120-day service period should not have begun until summonses were issued, such a determination is inconsistent with NRCP 4(i)'s clear language, which provides that the time for service starts upon "the filing of the complaint." *See S. Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 449, 451, 117 P.3d 171, 173, 174 (2005) (providing that courts must give terms their plain meaning when interpreting a statute and refusing to infer additional statutory requirements into a statute because "it is not the business of this court" to correct what may be legislative omissions from statutory

¹The service issues that arose below might have been avoided had the district court received the complaint and deferred ruling on whether the complaint should be filed without the payment of fees until the court determined that the proposed action was not frivolous. *See Jordan*, 121 Nev. at 62, 110 P.3d at 44 (noting, as one example of a permissible restriction on a vexatious litigant's access to the courts, that a court could prevent new complaints from being filed until the litigant proves "that the proposed action is not frivolous or brought for an improper purpose and/or implicates a fundamental right"). But because appellant does not assert that the district court's decision to file the complaint and defer issuing summonses was improper, we do not reach this issue.

language (internal quotation marks omitted)). And, when calculating 120 days from the date the complaint was filed, it is clear that appellant failed to timely complete service of process within that period.

While appellant did move for an extension of time to serve respondents, he did so after the 120-day service period had expired. And in making this request, appellant failed to argue that any good cause existed for his failure to request the extension within the 120-day period. *See* NRCP 4(i) (“If the party on whose behalf such service was required fails to file a motion to enlarge the time for service before the 120-day service period expires, the court shall take that failure into consideration in determining good cause for an extension of time.”); *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 597-98, 245 P.3d 1198, 1201-02 (2010) (holding that the court need not engage in a good cause analysis regarding a late-filed extension request if the plaintiff failed to proffer any good cause for the delay).


Under these facts, we cannot conclude that the district court abused its discretion in denying the motion to extend the time for service² and dismissing appellant’s complaint. *See* NRCP 4(i) (providing that a district court “shall” dismiss an action for failure to timely complete


²Appellant attempts to avoid this result by arguing that the 120-day time period within which to effectuate service did not start until the district court entered an order allowing summonses to issue. Having already determined that the 120-day service period begins when the complaint is filed pursuant to NRCP 4(i), this argument necessarily fails.


service of process); *see also Saavedra-Sandoval*, 126 Nev. at 598, 245 P.3d at 1202 (reviewing a denial of a motion seeking to extend the time to complete service of process under an abuse of discretion standard).

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Gary Fairman, District Judge
Joseph L. Mizzoni
Attorney General/Carson City
White Pine County Clerk

³Appellant also argues that dismissal based on the statute of limitations was incorrect. We need not address that argument, however, as we affirm the dismissal based on the failure to timely effectuate service. *See Pack*, 128 Nev. at 267, 277 P.3d at 1248 (affirming the dismissal of a complaint on an alternative basis than what the district court utilized to dismiss the case).