

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN DAVID HUNT, AN INDIVIDUAL,
Appellant,
vs.
TOM M. HARPER, II, AN INDIVIDUAL,
Respondent.

No. 70063

FILED

AUG 24 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

John David Hunt appeals from an order of dismissal in a tort action. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Hunt filed a negligence complaint against Harper on November 4, 2014. Pursuant to NRCPC 4(i), Hunt had until March 4, 2015, to serve Harper, but the district court extended Hunt's time to serve until July 8, 2015. Hunt asserts he finally served Harper in Colorado on December 21, 2015. On January 14, 2016, Harper filed a motion to dismiss the complaint for failure to timely serve, arguing only that Hunt failed to serve by July 8, 2015, without receiving another extension of time to serve. Hunt filed a second motion to enlarge time for service and an opposition to the motion to dismiss. In both pleadings, Hunt argued he was diligent in attempting to locate Harper, but he had difficulty locating Harper because Harper was evading service, and that these are factors the court should consider in determining whether good cause existed for his delay as required by *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 245 P.3d 1198 (2010). The district court granted Harper's motion to dismiss, finding Hunt did not establish good cause for his untimely motion to enlarge time for service. This appeal followed.

On appeal, Hunt argues that the district court erred when it dismissed his case for failure to timely serve the summons and complaint. This court reviews an order dismissing a complaint for failure to effect timely service of process for an abuse of discretion. *Id.* at 595, 245 P.3d at 1200. If a party files a motion to enlarge time for service after the initial 120-day service period expires, the party must first establish that good cause exists for the untimely filing of the motion to enlarge time and a failure to do so “ends the district court’s inquiry.” *Id.* at 596-97, 245 P.3d at 1201.

Although it appears that Harper may have been attempting to evade service,¹ and difficulty in serving the defendant is a factor for the district court’s consideration, *see id.* at 597, 245 P.3d at 1201, Hunt failed to provide any explanation for not filing his motion to enlarge time before time for service expired or even before Harper filed his motion to dismiss. Additionally, despite arguing that he diligently searched for Harper, Hunt failed to explain what attempts he made at locating Harper between March 10, 2015 (when he obtained his first extension of time to serve) and December 21, 2015 (when he asserts Harper was actually served).

Without an affidavit of due diligence or any other evidence explaining why Hunt could not locate Harper until December 2015, or why Hunt could not file his motion to enlarge time for service before time expired on July 8, 2015, we cannot say the district court abused its discretion by determining Hunt failed to show good cause for his delay in filing the motion


¹Harper’s primary argument below and on appeal is that he resided in Reno through November 2014 and could have easily been served there, but Hunt filed the complaint on November 4, 2014, and property records indicate Harper sold his Reno home in October 2014 (a fact Harper does not contest).


to enlarge time for service. *See id.* at 598, 245 P.3d at 1202 (“While good cause for failing to file a timely motion and good cause for granting an enlargement of time may be the same in some instances, failure to address the issue of cause for filing an untimely motion ends the district court’s inquiry.”).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Elliott A. Sattler, District Judge
Paul F. Hamilton, Settlement Judge
Kozak Lusiani Law
Gentile Law Group
Kent Law
Washoe District Court Clerk