

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRUCE HARRISON BIRCH,
Appellant,
vs.
PATRICK FLANAGAN; AND
JACQUELINE BRYANT,
Respondents.

No. 71688

FILED

AUG 23 2017

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

ORDER OF AFFIRMANCE

Bruce Harrison Birch appeals from a district court order dismissing a civil rights complaint. Second Judicial District Court, Washoe County; William A. Maddox, Senior Judge.

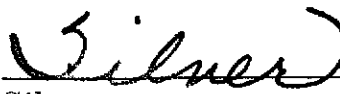
On February 2, 2016, Birch filed a complaint alleging civil rights violations against the Honorable Judge Patrick Flanagan. On April 11, he filed an amended complaint adding court clerk Jacqueline Bryant as a defendant. Birch never served Judge Flanagan or Bryant. On August 11, 2016, Judge Flanagan and Bryant moved to dismiss the action based on, among other things, Birch's failure to timely serve the summonses and complaints pursuant to NRCP 4(i). The district court granted the motion and dismissed Birch's case and this appeal followed.

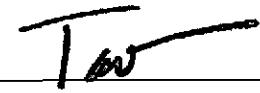
NRCP 4(i) requires that the summons and complaint in a civil action be served on defendants within 120 days of the filing of a complaint. The district court shall dismiss a complaint without prejudice if service is not completed and the party on whose behalf service is required fails to file a motion to enlarge the time for service and fails to show good cause for the failure to timely serve. NRCP 4(i). "Dismissal is mandatory unless there is a legitimate excuse for failing to serve within the 120 days." *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 512-13, 998 P.2d 1190, 1193


(2000). This court generally reviews orders granting motions to dismiss for failure to timely effect service of process for an abuse of discretion. *Abreu v. Gilmer*, 115 Nev. 308, 312-13, 985 P.2d 746, 749 (1999).

In this matter, the initial complaint was filed on February 2, 2016, and the amended complaint was filed on April 11, 2016. Pursuant to NRCP 4(i), service was to be made on Judge Flanagan on or before June 1, 2016, and on Bryant on or before August 9, 2016. See *Lacey v. Wen-Neva, Inc.*, 109 Nev. 341, 348-49, 849 P.2d 260, 264-65 (1993) (explaining that the filing of an amended complaint does not toll the period for serving the original defendant), *overruled in part on other grounds by Scrimmer*, 116 Nev. at 517, 998 P.2d at 1196. This was not done. Indeed, Birch admits he never effectuated service of the complaints on respondents. Moreover, Birch's appellate arguments do not demonstrate any abuse of discretion in the district court's decision to dismiss the underlying case under NRCP 4(i). Accordingly, based on our review of Birch's informal brief and the record on appeal, we conclude that the district court did not abuse its discretion in dismissing this matter due to Birch's failure to timely effect service of process, and thus we affirm the order dismissing the action on this ground.¹ See NRCP 4(i); *Abreu*, 115 Nev. at 312-13, 985 P.2d at 749.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹Given our resolution of this matter, we need not address the other grounds on which the district court dismissed the underlying action.

cc: Chief Judge, Second Judicial District Court
Hon. William A. Maddox, Senior Judge
Bruce Harrison Birch
Attorney General/Carson City
Attorney General/Reno
Washoe District Court Clerk