

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAMIN ZABETI, AN INDIVIDUAL,  
Appellant,  
vs.  
GREAT AMERICAN INSURANCE  
COMPANY,  
Respondent.

No. 70461

**FILED**

SEP 14 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
CHIEF DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Ramin Zabeti appeals from a district court order granting summary judgment<sup>1</sup> in a contractual indemnity case. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Zabeti obtained a Vehicle Industry Business License Bond from respondent Great American Insurance Company ("GAIC") on behalf of Knockout Auto Sales, LLC, of which he was a managing member. After an unsuccessful action was brought against the bond, GAIC brought the instant suit seeking reimbursement of its defense fees and costs from Zabeti, individually, and Knockout. Ultimately, the district court granted

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<sup>1</sup>Great American Insurance Company argues that this court lacks jurisdiction because the appeal was not taken from a final judgment. Although the notice of appeal was premature, a written final judgment has since been entered by the district court, and thus, the appeal is properly before this court. See NRAP 4(a)(6) (providing that when a written judgment is entered by the district court before the dismissal of a premature appeal, the notice of appeal is considered to be filed on the date of and after entry of the judgment).

GAIC's motion for summary judgment with respect to liability against Knockout and Zabeti and for damages against Zabeti, individually. On appeal, Zabeti argues, among other things, that he was never served with process.<sup>2</sup>

NRCP 4(i) requires that service of the summons and complaint be made within 120 days after the filing of the complaint. Service can be made to the defendant personally or by delivering a copy to an agent authorized by appointment to receive service of process. See NRCP 4(d)(6). "In the absence of actual specific appointment or authorization, and in the absence of a statute conferring authority, an agency to accept service of process will not be implied." *Foster v. Lewis*, 78 Nev. 330, 333, 372 P.2d 679, 680 (1962).

In the instant matter, Zabeti asserts that he never received personal service while GAIC maintains that service upon Zabeti was properly perfected because attorney Naomi Arin<sup>3</sup> was authorized to and ultimately did accept service on Zabeti's behalf. GAIC points to the acceptance of service on behalf of Knockout and Zabeti that Arin signed to support this contention.

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<sup>2</sup>In his opening brief, Zabeti incorrectly suggests he is raising this service issue for the first time on appeal; however, his reply brief corrects this and notes that this issue was raised in the district court. As the record shows that Zabeti repeatedly raised this issue below, it is properly before us in this appeal.

<sup>3</sup>Arin had previously defended Knockout and Zabeti, in his corporate capacity, in the bond action.

Despite this purported acceptance of service, at the May 28, 2015, initial hearing on Zabeti's motion to dismiss and GAIC's motion for summary judgment, Zabeti unequivocally stated that no one, including Arin, was authorized to represent him in his individual capacity or accept service on his behalf in that capacity. And Arin herself admitted that she did not represent Zabeti in his individual capacity and that it was her error in accepting service on his behalf.<sup>4</sup> Aside from the acceptance of service signed by Arin, which she admits was done in error, GAIC points to no other documents or evidence as demonstrating that Zabeti was properly served or that Arin was authorized to accept service on his behalf in his individual capacity. And our review of the record likewise does not reveal anything indicating that Arin was authorized to represent Zabeti or that service upon him was otherwise properly perfected. As such, we must take Zabeti's denial of authority as true and we therefore conclude he was not served with process pursuant to NRCP 4. *See Foster*, 78 Nev. at 333, 372 P.2d at 680. (holding that "[w]here the evidence that the person served was not authorized by the defendant to receive service of process is uncontradicted, as in this case, such denial of authority must be taken by the court as true, for the purpose of applying NRCP 4(d)(6)").


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<sup>4</sup>While it is clear from the record that there was some confusion by the court as to whether Zabeti, individually, was represented by Arin, the record demonstrates that the district court failed to ever really address the issue of service despite the fact that Zabeti raised it in multiple filings and at multiple hearings aside from summarily stating that Arin had accepted service on his behalf in the order granting GAIC's countermotion for summary judgment, entered on October 27, 2015.

Accordingly, we reverse the district court's judgment against Zabeti and remand this matter for further proceedings consistent with this order and NRCP 4. *See C.H.A. Venture v. G.C. Wallace Consulting Eng'rs, Inc.*, 106 Nev. 381, 794 P.2d 707 (1990) (reversing a judgment because service was not properly effected, such that jurisdiction did not attach and the district court therefore had no power to enter a valid judgment).

It is so ORDERED.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Rob Bare, District Judge  
Ramin Zabeti  
The Faux Law Group  
Eighth District Court Clerk

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<sup>5</sup>Given the basis for our decision, we do not reach the merits of Zabeti's remaining arguments.