

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN ELVIN TURNER,
Appellant,

vs.

CLARK COUNTY; CLARK COUNTY
SHERIFF'S OFFICE; DOUGLAS C.
GILLESPIE; CCDC; JOSEPH
LOMBARDO; LVMPD; MARQUIS
AURBACH COFFING; BONNIE LOLLY;
KELLY N. SMITH; THE STATE OF
NEVADA; AND JOHN
BONAVENTURE,
Respondents.

No. 72633

FILED

SEP 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK 0

ORDER OF AFFIRMANCE

John Elvin Turner appeals from a district court order dismissing his complaint for failure to effect service of process. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Turner filed his complaint on August 22, 2016. On March 6, 2017, the district court, on its own initiative, entered an order dismissing the case pursuant to NRCP 4(i) because Turner failed to serve the summons and complaint within 120 days or request an enlargement of time for service. This appeal followed.

NRCP 4(i) provides that “[i]f a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed . . . upon the court’s own initiative with notice to such party” unless the party required to effectuate

service files a motion to enlarge the time for service and shows good cause for the failure to timely serve.¹ Pursuant to NRCP 4(i) “the district court is limited to enlarging the time for service only upon a motion to enlarge the 120-day service period.” *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 596, 245 P.3d 1198, 1201 (2010) (internal quotations omitted).

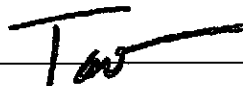
In this matter, the complaint was filed on August 22, 2016 and service was to be effected on or before December 20, 2016. Turner, however, never effectuated service on respondents. Nonetheless, on appeal, he maintains that the district court should not have dismissed his complaint while he was trying to effect service and presents arguments regarding difficulties he allegedly experienced in trying to serve respondents. But these arguments should have been raised in a motion to extend the service period, and Turner never filed such a motion below. And because Turner did not seek additional time to effect service of process, the district court was required to dismiss his complaint, as NRCP 4(i) makes dismissal mandatory where no motion to extend the service period has been filed. *Id.*;


¹The record demonstrates that the district court failed to provide notice to Turner prior to dismissing the matter on service grounds as required by NRCP 4(i). But on appeal, Turner presents no arguments regarding the district court’s failure to notify him prior to dismissing his case. As a result, he has waived any such argument, and we do not consider this issue in resolving his appeal. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that issues not raised in an appellant’s opening brief are waived).

see also NRCP 4(i). Accordingly, we affirm the district court's order dismissing the complaint.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Ronald J. Israel, District Judge
John Elvin Turner
Eighth District Court Clerk