

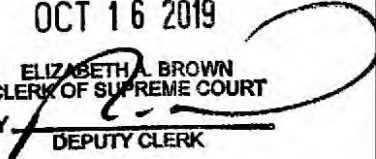
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

J. H.,  
Appellant,  
vs.  
STATE OF NEVADA DEPARTMENT  
OF EMPLOYMENT, TRAINING AND  
REHABILITATION, VOCATIONAL  
REHABILITATION BUREAU,  
Respondent.

No. 77047-COA

**FILED**

OCT 16 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

J.H. appeals from a district court order dismissing a petition for judicial review. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

J.H. requested a fair hearing pursuant to NRS 615.280 and 34 CFR § 361.57. After that request was dismissed and J.H.'s motion for reconsideration denied, he filed a petition for judicial review on December 8, 2017, and served respondent on April 11, 2018. Respondent then moved to dismiss based on, among other things, the fact that it was not timely served with the petition. J.H. opposed the motion, arguing that there was good cause for an extension of time to serve because he did not have the funds to serve the petition earlier, the individuals carrying out service took longer than they should have, he thought he had 120 days under NRCP 4(i)

to serve, there was an outdated and incorrect statute on justia.com, and it took time to get his fee waiver approved. The district court granted the motion and specifically determined that J.H.'s reliance on incorrect information from a website did not establish good cause. J.H. then moved for reconsideration, which the district court denied, noting that J.H. missed the 45-day deadline for service by 79 days and that he did not effect service until 92 days after the court entered its order allowing him to proceed in forma pauperis. The district court further stated that J.H. had no good cause for serving respondent as late as he did and that he cited no factual or legal reason showing good cause for his failure to meet the 45-day deadline. This appeal followed.

Under NRS 233B.130(5) a petition for judicial review must be served "within 45 days after the filing of the petition, unless, upon a showing of good cause, the district court extends the time for such service." A district court's good cause determination is reviewed for an abuse of discretion. *See Spar Bus. Servs., Inc. v. Olson*, 135 Nev., Adv. Op. 40, \_\_\_ P.3d \_\_\_, \_\_\_ (2019).

On appeal, J.H. failed to address the district court's determination that his reliance on incorrect information from justia.com did not establish good cause and he has therefore waived any arguments as to that determination. *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

appellant's opening brief are waived). Instead, he argues that the delay in service was out of his control because he had to wait on the court to enter the order allowing him to proceed in forma pauperis, then had to wait for the documents to be delivered for service, and for the constable or sheriff to effect service.

But J.H.'s arguments in this regard do not demonstrate that the district court abused its discretion in finding that there was no good cause for effecting service as late as he did, which was 79 days late and 92 after the court entered the order allowing him to proceed in forma pauperis. Notably, J.H. provided no evidence or argument as to when he actually provided the materials to the constable or sheriff for service,<sup>1</sup> and thus it is impossible to determine whether the delay was in his providing them with the materials or in the constable or sheriff's efforts to serve after the materials were provided. Thus, based upon the record and arguments before us, we cannot say that the district court abused its discretion in determining J.H. failed to establish good cause for an extension of time to effect service. See *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014)

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<sup>1</sup>While the 45-day time period for serving the petition is set forth in NRS 233B.130(5), we make no comment as to whether the process by which a petition for judicial review is served "must accord with NRCP 4." See *Spar Bus. Servs.*, 135 Nev., Adv. Op. 40, n.4, \_\_\_ P.3d at \_\_\_ n.4.

("An abuse of discretion occurs when no reasonable judge could reach a similar conclusion under the same circumstances."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

  
\_\_\_\_\_, J.  
Bulla

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<sup>2</sup>J.H. also appears to argue that he should be given leniency because he is not an attorney, but that does not excuse his failure to follow procedural rules. *See Rodriguez v. Fiesta Palms, LLC*, 134 Nev., Adv. Op. 78, 428 P.3d 255, 258-59 (2018) (noting that procedural rules cannot be applied differently to pro se litigants and that "a pro se litigant cannot use his alleged ignorance as a shield to protect him from the consequences of failing to comply with basic procedural requirements"). Additionally, while J.H. states that he believes the statute setting forth a 45-day time limit for service is unconstitutional, he does not provide any cogent argument in this respect and therefore, we need not address this issue. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument). Further, insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Michael Villani, District Judge  
J. H.  
Attorney General/Las Vegas  
Eighth District Court Clerk