

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALVIN J. GRIFFIN, III, AN
INDIVIDUAL,
Appellant,
vs.
ARTHUR ASHKINAZI, PRESIDENT;
AND ALL DESERT APPLIANCES,
D/B/A ADA REPAIR, INC.,
Respondents.

No. 77397-COA

FILED

OCT 30 2019

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

ORDER OF REVERSAL AND REMAND

Alvin J. Griffin, III appeals from a district court order granting dismissal and summary judgment in a tort and contract action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Griffin brought suit against respondents for breach of contract, negligence, and defamation. Based on the documents before us, Griffin purportedly served respondents by mailing the summons and complaint to them. Respondents ultimately brought a motion for dismissal and summary judgment, which alleged that they were not properly served and alternatively sought summary judgment on the merits of Griffin's individual claims. Over Griffin's opposition, the district court granted summary judgment and dismissal. This appeal followed.

As an initial matter, to the extent that the challenged order purported to grant respondents summary judgment on Griffin's claims, we necessarily reverse that decision as the order fails to fully comply with

NRCP 56(c)¹ (requiring the court to state the legal and factual reasons for its grant of summary judgment). Notably, the district court's summary judgment order did not contain actual findings of fact related to the bases for granting summary judgment, as the "findings" set forth in the order largely consisted of summarily stated legal conclusions. And even if we were to construe these statements as the conclusions of law required by NRCP 56(c), they would likewise be insufficient to allow us to uphold the grant of summary judgment. Accordingly, to the extent the challenged order purported to grant summary judgment in respondents' favor, we reverse that decision based on the deficiencies outlined above.² *See ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 656-57, 173 P.3d 734, 746 (2007) (reversing and remanding a portion of a district court order granting summary judgment because the order failed to set forth the undisputed material facts and legal determinations supporting its decision).

The district court's order also correctly noted that the underlying complaint was not properly served, and to the extent that Griffin challenges this decision on appeal, his arguments are without merit. Here,

¹The Nevada Rules of Civil Procedure were amended effective March 1, 2019. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Accordingly, we cite the previous versions of the applicable rules herein.

²In light of the basis on which we reverse the grant of summary judgment, we make no comment on the merits of the district court's determination that summary judgment was warranted.

Griffin contends that service was properly completed under the Federal Rules of Civil Procedure, but those rules are inapplicable in this state court proceeding. Instead, Griffin was required to follow the Nevada Rules of Civil Procedure, which required personal service, rather than service by mail. See NRCP 4(d); see also *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 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”).

Since Griffin neither properly completed service within 120 days of filing the complaint nor sought an extension of time to do so, the district court was correct that service was not properly completed. See NRCP 4(i); *Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 598, 245 P.3d 1198, 1202 (2010). But the failure to properly serve the complaint was not the basis on which the underlying action was resolved, and even if it was, the failure to properly serve would have necessitated a dismissal without prejudice. See NRCP 4(i) (providing for dismissal without prejudice if service of the summons and complaint is not timely made). Instead, the court resolved the underlying matter through a grant of summary judgment on the merits, which disposed of the matter with prejudice, and thereby operates as a final judgment with preclusive effect. See *Lee v. GNLV Corp.*, 116 Nev. 424, 427-28, 996 P.2d 416, 418 (2000) (noting that an “order granting summary judgment, which adjudicate[s] the rights and liabilities of all parties and dispose[s] of all issues presented in the case, [i]s final”);

see also *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008) (noting that the entry of a valid final judgment may lead to the application of claim preclusion).

Based on the foregoing, we conclude that the district court's summary judgment order must be reversed and remanded to the district court for further proceedings consistent with this order.³

It is so ORDERED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Alvin J. Griffin, III
Law Office of Neal Hyman
Eighth District Court Clerk

³Although this court generally will not grant a pro se appellant relief without first providing respondents an opportunity to file an answering brief, see NRAP 46A(c), the filing of an answering brief would not aid this court's resolution of this case, and thus, no such brief has been ordered.

⁴Insofar as Griffin raises arguments that are not specifically addressed herein, they need not be reached given the disposition of this appeal.