

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KAREN E. GHOLSON,
Appellant,
vs.
EWING BROS., INC., INCORRECTLY
NAMED AS EWING BROTHERS
TOWING,
Respondent.

No. 78603-COA

FILED

AUG 12 2020

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

ORDER OF AFFIRMANCE

Karen E. Gholson appeals from a district court order dismissing a complaint in a tort action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Gholson filed a complaint in the district court naming "Ewing Brothers Towing" as the defendant, alleging in relevant part that the company had towed and stored her son's van and then wrongfully prevented her from accessing it to retrieve items of her personal property that were stored therein. On those grounds, Gholson essentially sought the return of her property, as well as compensatory damages and \$25,000,000 in punitive damages. Gholson also filed proof of service with the district court indicating that a deputy sheriff had personally served the summons and complaint on an employee of Ewing Brothers Towing at its place of business.

Respondent Ewing Bros., Inc. (Ewing), a Nevada corporation, then filed a motion to dismiss Gholson's complaint under NRCP 12(b) on grounds that, because she named and served a nonexistent entity, she failed to properly serve Ewing, and the court therefore lacked personal jurisdiction over it. Ewing also argued that Gholson failed to state a claim

upon which relief can be granted, as she failed to allege that she was the owner of the van or an agent of the owner such that Ewing would have had any duty to allow her to access to the vehicle under NRS 706.4467(3).¹ The district court agreed and dismissed Gholson's complaint without prejudice under NRCP 12(b)(2) for lack of personal jurisdiction, NRCP 12(b)(3) for insufficient process, and NRCP 12(b)(5) for failure to state a claim.² This appeal followed.

On appeal, Gholson argues only that she properly stated a claim for relief such that dismissal under NRCP 12(b)(5) was improper; she does not at all challenge the district court's order with respect to lack of personal jurisdiction or lack of service. *See C.H.A. Venture v. G.C. Wallace Consulting Eng'rs, Inc.*, 106 Nev. 381, 384, 794 P.2d 707, 709 (1990) ("Personal service or a legally provided substitute must still occur [in spite of actual notice] in order to obtain jurisdiction over a party."). And the failure to raise an issue on appeal results in a waiver of that issue. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011). Accordingly, Gholson has waived any challenge to the district court's rulings on personal jurisdiction and service, *id.*, and we necessarily

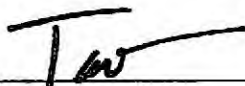
¹Gholson later filed affidavits alleging that the company had also denied her son access to the vehicle, but she never sought to amend her complaint to add these allegations.

²Although the district court in its order expressly relied upon NRCP 12(b)(3)—which pertains only to the insufficiency of process itself—it also found that Gholson failed to effect proper service of process, which is set forth in NRCP 12(b)(4).

affirm the dismissal without reaching her NRCP 12(b)(5) arguments.³ See *Hillis v. Heineman*, 626 F.3d 1014, 1019 n.1 (9th Cir. 2010) (affirming a dismissal where the appellants failed to challenge an alternative ground the district court provided for it). Given the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Nancy L. Allf, District Judge
Karen E. Gholson
Mountain Vista Law Group LLC
Olson, Cannon, Gormley, & Stoberski
Eighth District Court Clerk

³Because the dismissal was without prejudice, we note that it does not prohibit Gholson from again attempting to assert her underlying claims against Ewing in a new complaint. See *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001) (“The primary meaning of ‘dismissal without prejudice,’ we think, is dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim.”).