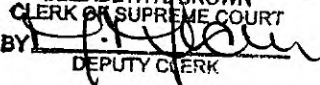


IN THE SUPREME COURT OF THE STATE OF NEVADA

CHYUAN YONG CHEAH, AN
INDIVIDUAL,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
NANCY L. ALLF, DISTRICT JUDGE,
Respondents,
and
ANDRE DAVIS, AN INDIVIDUAL,
Real Party in Interest.

No. 84983

FILED
APR 27 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER DENYING PETITION

This is an original proceeding for a writ of prohibition challenging a district court order denying a motion to quash service of process on a foreign national via a rental car company pursuant to NRS 14.075(1).

Petitioner Chyuan Yong Cheah is a Malaysian national who was involved in a vehicle accident while operating a rental car in Las Vegas in September 2018, and who allegedly injured real party in interest Andre Davis. Davis sued Cheah for damages in 2019 and unsuccessfully attempted to serve Cheah with process. In October 2021, the Legislature enacted NRS 14.075, which allows for service of a lessee foreign national to be effectuated via a lessor rental car company in suits of this nature. Shortly thereafter, Davis effectuated service on Cheah in compliance with that statute by serving process on Cheah's non-party rental car company,

Sixt-Rent-A-Car (SRC). Cheah moved to quash service, arguing that NRS 14.075 could not be applied to him retroactively. The district court denied Cheah's motion to quash, determining that NRS 14.075 was a procedural, rather than substantive, change in the law, such that the statute could be applied to an already-pending case.

Cheah then brought the instant writ petition challenging the district court's order denying his motion to quash service. Cheah argues that applying NRS 14.075 affects his due process rights and that, therefore, it is substantive. We disagree.

Writ relief is an extraordinary remedy, and it is within this court's sole discretion to entertain a petition. *Willick v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 19, 506 P.3d 1059, 1061 (2022). We elect to entertain the instant petition because it presents an issue of first impression: whether NRS 14.075 is procedural, and therefore applies to cases pending when enacted, or substantive. As petitioner, it is Cheah's burden to demonstrate that extraordinary relief is warranted. *Republican Nat'l Comm. v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 88, 521 P.3d 1212, 1214 (2022); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) ("Petitioners carry the burden of demonstrating that extraordinary relief is warranted."). "It is well established that [a] writ of prohibition is the appropriate remedy for a district court's erroneous refusal to quash service of process." *Grupo Famsa, S.A. de C.V. v. Eighth Judicial Dist. Court*, 132 Nev. 334, 336-37, 371 P.3d 1048, 1050 (2016) (alteration in original) (quoting *Casentini v. Ninth Judicial Dist. Court*, 110 Nev. 721, 724, 877 P.2d 535, 537-38 (1994)). Therefore, we turn to the merits of the petition.

This court reviews questions of statutory interpretation de novo. *Republican Nat'l Comm.*, 138 Nev., Adv. Op. 88, 521 P.3d at 1214; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 198, 179 P.3d 556, 559 (2008).

“[This court] generally presume[s] that [newly enacted statutes] apply prospectively unless the Legislature clearly indicates that they should apply retroactively or the Legislature’s intent cannot otherwise be met.” *Salloum v. Boyd Gaming Corp.*, 137 Nev. 549, 551, 495 P.3d 513, 516 (2021) (third alteration in original) (quoting *Valdez v. Emp’rs Ins. Co. of Nev.*, 123 Nev. 170, 179, 162 P.3d 148, 154 (2007)). However, “statutes that *do not change substantive rights* and instead relate solely to remedies and procedure . . . *apply to any cases pending when . . . enacted.*” *Id.* (second emphasis added) (quoting *Valdez*, 123 Nev. at 179-80, 162 P.3d at 154). Thus, under *Salloum*, NRS 14.075 applies in this case if either: (1) the Legislature intended for the statute to apply retroactively, or (2) the statute is procedural as opposed to substantive and applies to pending cases when enacted.

NRS 14.075(1) provides:

When a short-term lessor enters into a lease with a short-term lessee who is not a resident of the United States and, as part of or associated with the lease, the short-term lessee purchases liability insurance from the short-term lessor in its capacity as an agent for an authorized insurer, the short-term lessor is authorized to accept and, if served, shall accept, service of a summons and complaint and any other required documents on behalf of the short-term lessee for any crash resulting from the operation of the vehicle within this State during the lease. If the short-term lessor has a registered agent for service of process on file with the Secretary of State, process must be served on the

registered agent of the short-term lessor, either by first-class mail, return receipt requested, or by personal service.

Here, the statute is silent in terms of retroactive application. Nonetheless, Cheah claims that the legislative history of NRS 14.075 supports his position that the statute should be applied prospectively. Ordinarily, this court will not look beyond a statute's face to determine legislative intent unless it is ambiguous. *Public Emps. Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 147, 179 P.3d 542, 548 (2008). While Cheah has not asserted that NRS 14.075 is ambiguous, even giving deference to Cheah's argument, we find it unpersuasive.

We conclude that NRS 14.075 is procedural because it does not change Cheah's substantive right to service of process. Instead, the statute merely alters the process by which such service may properly be effectuated.

Cheah argues that NRS 14.075 is substantive. However, his argument is premised on an incorrect claim that prior to enactment of NRS 14.075, foreign nationals were entitled to personal service. This court has recognized that due process only requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Grupo Famsa*, 132 Nev. at 337, 371 P.3d at 1050 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). Here, there are two authorities indicating that Cheah was not entitled to personal service prior to the enactment of NRS 14.075.

First, NRCP 4.3(b)(1) allows service on individuals outside of the United States by any form of mail that requires a signed receipt if there

is not an internationally agreed means of service.¹ Because Cheah concedes that Malaysia is not a signatory to the Hague Service Convention,² there is no internationally agreed upon means of service and NRCP 4.3 applies. Consequently, Cheah could have been properly served via mail pursuant to NRCP 4.3.

Second, NRS 14.070 allows substituted service upon the Director of the Department of Motor Vehicles for nonresident motorists in actions arising from a motor vehicle accident that occurs in Nevada. Cheah claims that this court has determined that due process requirements for foreign nationals apply to NRS 14.070, and therefore, should apply to NRS 14.075 as well. Cheah cites this court's holding in *Tao v. Eighth Judicial District Court*, in support of his position. No. 80308, 2020 WL 4284337 (Nev. July 24, 2020) (Order Granting Petition for Writ of Prohibition).

Ceah's reliance on *Tao* is unpersuasive. In *Tao*, this court held that NRS 14.070 was preempted by the Hague Service Convention, and because China was a signatory to the Hague Service Convention, NRS 14.070 could not be utilized to effectuate service in China. *Id.* at *1. Indeed, this court reasoned that China's Declarations and Reservations to the Hague Service Convention provide that China only allows defendants to be served through the Central Chinese Authority, as opposed to traditional postal channels. *Id.* Hence, *Tao* is distinguishable here, where (1) Cheah

¹We note that NRCP 4.3 was enacted March 1, 2019, before Davis's complaint was filed against Cheah on October 20, 2019. Additionally, Cheah has not disputed that NRCP 4.3 applies to him.

²Formally, the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. *See, e.g., Tao v. Eighth Judicial Dist. Court*, No. 80308, 2020 WL 4284337, at *1 (Nev. July 24, 2020) (Order Granting Petition for Writ of Prohibition).

concedes that Malaysia is not a signatory to the Hague Service Convention, and (2) Cheah does not cite any Malaysia laws requiring alternative methods of service. Thus, *Tao* provides no basis to conclude that Cheah's service pursuant to NRS 14.075 was subject to any additional due process requirements afforded to foreign nationals.

In sum, we are not persuaded by Cheah's arguments that NRS 14.075 alters his due process rights and is therefore substantive. Rather, we conclude that the statute is procedural by its plain language. Thus, Cheah has not carried his burden in showing that writ relief is warranted.

Accordingly, we conclude that the district court did not err in denying Cheah's motion to quash service of process. Therefore, we

ORDER the petition DENIED.



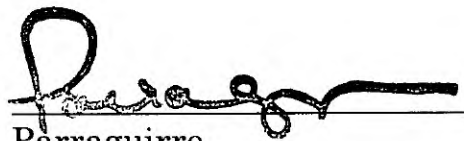
Herndon

J.



Lee

J.



Parraguirre

J.

cc: Hon. Nancy L. Alf, District Judge
Hall Jaffe & Clayton, LLP
Richard Harris Law Firm
Eighth District Court Clerk