

IN THE SUPREME COURT OF THE STATE OF NEVADA

IAN CHRISTOPHERSON, D/B/A  
CHRISTOPHERSON LAW OFFICES,  
Appellant,  
vs.  
WYATT INSURANCE AGENCY, INC.,  
Respondent.

No. 37978

FILED

APR 28 2004

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *Richard*  
CHIEF DEPUTY CLERK

This is an appeal from a district court order certified as final under NRCP 54(b), partially dismissing an action for failure to timely serve the complaint.

Appellant Ian Christopherson filed the underlying action against respondent Wyatt Insurance Agency, Inc., and other defendants after Christopherson's malpractice insurance claim was denied. Christopherson filed his complaint on August 18, 2000, and an amended complaint three days later on August 21, 2000. It appears that the case was originally assigned to District Judge Redmon, but the district court docket entries indicate that the case was reassigned to District Judge Earl.

On December 20, 2000, Christopherson filed an ex parte motion to extend the time to perfect service, in which he sought an additional ninety days to serve Wyatt Insurance and its owner, defendant Patricia Wyatt. Christopherson alleged that Wyatt Insurance was no longer a valid Nevada corporation conducting business, and that Christopherson had exercised due diligence in his efforts to locate Patricia Wyatt. Christopherson attached affidavits of due diligence reflecting efforts to locate Patricia Wyatt in Clark County and through the Nevada Secretary of State.

A hearing date on Christopherson's motion was apparently scheduled for January 22, 2001, but prior to that hearing, Christopherson obtained an order from District Judge Pavlikowski on January 2, 2001, extending the time for service by ninety days until February 21, 2001. On February 19, 2001, Patricia Wyatt was personally served individually and on behalf of Wyatt Insurance in Arizona.

On March 12, 2001, Patricia Wyatt and Wyatt Insurance moved to quash service of process and dismiss the complaint because service was untimely. Christopherson opposed the motion. District Judge Earl granted the Wyatt defendants' motion to dismiss on the basis that Christopherson failed to show good cause why the service of process was not effected on Wyatt Insurance or Patricia Wyatt within 120 days of filing the amended complaint.

Christopherson filed the instant appeal, and Patricia Wyatt and Wyatt Insurance were named as respondents. On March 18, 2003, this court dismissed the appeal as to Patricia Wyatt only, because the discharge of Patricia's bankruptcy proceeding prevented Christopherson from pursuing the appeal against her.

On appeal, Christopherson contends that the district court erred in granting the Wyatt defendants' motion to dismiss because he served them within the extended period. Christopherson argues that he established due diligence to support the extension.<sup>1</sup> We agree.

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<sup>1</sup>As Wyatt Insurance is a corporation proceeding in this appeal without representation of counsel, Wyatt Insurance is not entitled to file a brief in this matter. See Guerin v. Guerin, 116 Nev. 210, 993 P.2d 1256 (2000) (stating that a legal entity such as a trust must be represented by a licensed attorney in Nevada state courts); Salman v. Newell, 110 Nev. 1333, 885 P.2d 607 (1994).

NRCP 4(i) provides that service of the summons and complaint must be made within 120 days after filing the complaint or the action will be dismissed without prejudice unless the serving party can show good cause why service was not made within 120 days. The “good cause” determination is within the district court’s discretion.<sup>2</sup> In Scrimmer v. District Court,<sup>3</sup> we established that district courts should engage in a “balanced and multi-faceted analysis” when determining whether to dismiss a complaint under NRCP 4(i). A number of considerations may govern this analysis, and no single consideration is controlling: (1) difficulties in locating the defendant, (2) defendant’s efforts at evading service or concealment of improper service until after the 120-day period has elapsed, (3) plaintiff’s diligence in attempting to serve the defendant, (4) difficulties encountered by counsel, (5) the running of the limitations period, (6) the parties’ good faith settlement attempts during the 120-day period, (7) the lapse of time between the end of the 120-day period and the actual service of process on the defendant, (8) the prejudice to the defendant caused by the plaintiff’s delay in serving process, (9) the defendant’s knowledge of the lawsuit’s existence, and (10) any extensions of time for service granted by the district court.<sup>4</sup> We further noted that a plaintiff running out of time may seek an extension under NRCP 6(b), and if the 120-day period has already expired, may obtain an extension under NRCP 6(b) upon a showing of “excusable neglect.”<sup>5</sup>

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<sup>2</sup>See Scrimmer v. Dist. Ct., 116 Nev. 507, 513, 998 P.2d 1190, 1193-94 (2000).

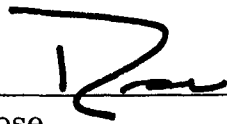
<sup>3</sup>Id. at 516, 998 P.2d at 1195-96.


<sup>4</sup>Id. at 517, 998 P.2d at 1196.

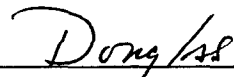
<sup>5</sup>Id. at 516 n. 6, 998 P.2d at 1196 n. 6.

Here, there are several considerations in favor of the finding of good cause. First, Christopherson exercised diligence in attempting to serve the Wyatt defendants, and the delay was caused by difficulties in locating their correct addresses, given that Patricia Wyatt had moved out of state and Wyatt Insurance was no longer a valid Nevada corporation. Also, Christopherson moved for an extension of time only one or two days after the 120-day period expired. District Judge Pavlikowski, therefore, did not abuse his discretion in granting Christopherson an extension for service, and Christopherson served process within that period. Consequently, we conclude that the district court abused its discretion in dismissing the action as to respondent Wyatt Insurance. Thus, we reverse the district court's order dismissing the action as to Wyatt Insurance, and remand this matter for further proceedings.<sup>6</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Allan R. Earl, District Judge  
Christopherson Law Offices  
Wyatt Insurance Agency, Inc.  
Clark County Clerk

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<sup>6</sup>As this appeal was previously dismissed as to Patricia Wyatt, our order does not affect any district court ruling as to her.