

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KIT TYSON SEARLE, AN
INDIVIDUAL,
Appellant,
vs.
POWER MAX, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Respondent.¹

No. 84769-COA

FILED

JUL 10 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kit Tyson Searle appeals from a district court order dismissing a tort action for lack of service. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Searle initiated the underlying negligence action against Chad Haefner and respondent Power Max, LLC, in connection with an automobile collision. Alleging difficulties in locating the defendants, Searle sought and obtained an extension of time to effect service of process from the district court, making July 28, 2020, the new deadline for service. On February 25, 2021, over six months after the extended service period expired, Searle filed a second motion for an extension of time in which he also requested to serve the defendants by publication. In the motion, Searle alleged that he had made diligent efforts to locate Power Max, but he failed to set forth any argument as to defendant Haefner or provide any explanation as to why he filed the motion over six months late.

¹We direct the clerk of the court to modify the caption for this case to conform to the caption on this order.

Appearing through counsel, Power Max filed an opposition and countermotion to dismiss the action for failure to effect service pursuant to NRCP 12(b)(4). In its briefing, Power Max emphasized Searle's failure to explain why he filed the second motion for an extension over six months late. Searle did not file a reply in support of his motion or an opposition to Power Max's countermotion, and the district court ultimately entered an order denying Searle's motion and granting Power Max's countermotion to dismiss, concluding in relevant part that Searle failed to establish good cause for his failure to timely file the second motion for an extension of time. This appeal followed.²

This court reviews both a dismissal for failure to effect timely service and a district court's good-cause determination for an abuse of discretion. *Moroney v. Young*, 138 Nev., Adv. Op. 76, 520 P.3d 358, 361 (2022). If a plaintiff fails to timely file a motion for an extension of time to effect service, the district court must first consider whether good cause exists for such failure before determining whether good cause exists to further extend the service period. NRCP 4(e)(4); *Cervantes-Guevara v. Eighth Judicial Dist. Court*, 138 Nev. 87, 87, 505 P.3d 393, 395 (2022).

On appeal, Searle does not dispute that his second motion for an extension of time was over six months late; rather, he contends that good cause for an extension of time existed under the factors set forth in *Scrimmer*

²Although Power Max's counsel has appeared in this appeal on behalf of both Power Max and Haefner, Haefner was not served with process and did not make an appearance in the district court below. He therefore did not become a party to the underlying case and is not a proper party to this appeal. See *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994) (explaining that a person who is not served with process and does not make an appearance in the district court is not a party to that action).

v. Eighth Judicial District Court, 116 Nev. 507, 516, 998 P.2d 1190, 1195-96 (2000). But Searle acknowledges in his appellate briefing that a district court must first consider whether good cause exists for filing an untimely motion for an extension of time before conducting a full *Scrimmer* analysis. See *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 597, 245 P.3d 1198, 1201 (2010) (“We conclude that only upon a showing of good cause to file an untimely motion to enlarge time for service should the district court then apply *Scrimmer*’s good-cause factors for the delay in service.”). And, despite this acknowledgement, Searle devotes the majority of his briefing not to explaining why he supposedly had good cause for filing a tardy motion for an extension of time, but rather to why he believes good cause existed to extend the time for service.

To the extent Searle sets forth arguments concerning the *Scrimmer* factors that our supreme court has recognized as being relevant to the threshold good-cause analysis for an untimely filed motion for an extension, see *id.* (providing that, “in the initial analysis of an untimely motion, some of *Scrimmer*’s factors may be applicable to determine if good cause exists for filing a tardy motion”), he nevertheless fails to provide any cogent explanation for why he waited over six months to file the second motion for an extension, nor did he provide any such explanation to the district court, see *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellants have a responsibility to cogently argue their concerns on appeal); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”). Indeed, the only attempt at service reflected in the record is a failed attempt to serve Power Max’s registered agent on July 6,

2020, and Searle wholly fails to explain why he waited until February 25, 2021, to seek a further extension or what hindered his ability to do so before the July 28, 2020, deadline for service.

Under these circumstances, we discern no abuse of discretion in the district court's decision to deny Searle's second motion for an extension of time and dismiss his complaint. *See Cervantes-Guevara*, 138 Nev. at 92, 505 P.3d at 398 (determining the district court did not abuse its discretion in denying a second motion for extension of time where it was filed 55 days late and where appellant failed to demonstrate good cause for ceasing service efforts approximately seven months before beginning the service-by-publication process). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Westbrook


_____, Sr.J.
Silver

³The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.

cc: Hon. Erika D. Ballou, District Judge
Eleissa C. Lavelle, Settlement Judge
Brandon L. Phillips, Attorney at Law, PLLC
Ranalli Zaniel Fowler & Moran, LLC/Henderson
Eighth District Court Clerk