

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRUCE A. MORRIS, AN INDIVIDUAL;
CITY COMMUNITY CHURCH INC.,
F/K/A CALVARY COMMUNITY
ASSEMBLY OF GOD, INC., A NEVADA
CORPORATION; TOM LUKER,
INDIVIDUALLY AND ON BEHALF OF
ALL THOSE SIMILARLY SITUATED;
JOEL HELMS, INDIVIDUALLY AND
ON BEHALF OF ALL THOSE
SIMILARLY SITUATED; AND
REYNALDO MONTENEGRO,
INDIVIDUALLY AND ON BEHALF OF
ALL THOSE SIMILARLY SITUATED,
Appellants,

vs.

THE GENERAL COUNCIL OF THE
ASSEMBLIES OF GOD, A FOREIGN
CORPORATION; ASSEMBLIES OF
GOD, NORTHERN CALIFORNIA AND
NEVADA DISTRICT COUNCIL, INC., A
FOREIGN CORPORATION; DAVID L.
CHILDERS, AN INDIVIDUAL; BRET L.
ALLEN, AN INDIVIDUAL; AND JAY A.
HERNDON, AN INDIVIDUAL,
Respondents.

No. 84108-COA

FILED

AUG 07 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E. A. Brown*
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART, VACATING IN
PART, AND REMANDING*

Bruce A. Morris, City Community Church, Inc., and named class representatives Tom Luker, Joel Helms, and Reynaldo Montenegro appeal from a district court order dismissing their complaint and a post-

judgment order denying a motion for reconsideration. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

In the proceedings below, Morris, City Community Church, and the other named class representatives (collectively Morris) commenced an action against respondents, the General Council of The Assemblies of God, Assemblies of God, Northern California and Nevada District Council, Inc., David L. Childers, Bret L. Allen, and Jay A. Herndon alleging various tort and contract claims related to the organization and operation of City Community Church, which was formerly known as Calvary Community Assembly of God.¹

As relevant here, Morris filed the operative complaint in this matter on December 17, 2020. However, as Morris concedes, respondents were not properly served within the 120-day time period required by NRCP 4(e)(1), or the 180-day time period set forth in EDCR 1.90. Accordingly, respondents filed separate motions to dismiss and/or to quash service under NRCP 12(b)(4). Morris did not oppose the motions, and thereafter the district court entered an order granting the motions on the basis that Morris had failed to oppose the motions or appear at the hearing and dismissed Morris' complaint with prejudice. Morris then timely moved for rehearing of the issue, arguing that the dismissal should be without prejudice. After full briefing, the district court denied Morris' motion for reconsideration. This appeal followed.

¹We do not recount the facts except as necessary for our disposition.

On appeal, Morris concedes that the district court appropriately dismissed the operative complaint based on his failure to serve the complaint or timely move for an extension within the time period established by NRC 4(e) and EDCR 1.90. Accordingly, we affirm the portion of the district court's order dismissing Morris' complaint. Nevertheless, Morris contends that a partial reversal is appropriate, and argues that the district court erred when it dismissed his complaint with prejudice and denied his motion for reconsideration. Respondents, on the other hand, argue that the district court appropriately dismissed the case with prejudice under local rules and the court's inherent authority. Further, respondents argue that this court should summarily affirm the order of the district court due to Morris' failure to oppose the initial motion to dismiss. Although respondents correctly note that this court may summarily affirm the district court's order here based on Morris' failure to oppose the motion below, we nonetheless address the merits of this appeal.²

This court reviews a dismissal for failure to effect timely service of process for an abuse of discretion. *Moroney v. Young*, 138 Nev., Adv. Op. 76, 520 P.3d 358, 361 (2022). And while a district court's order in this regard is entitled to deference, "deference is not owed to legal error," *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015), and a district

²It appears that counsel for the parties prepared a stipulation and order to continue the hearing and extend the opposition deadlines in this matter. However, this stipulation was seemingly not filed in the current action, but instead was filed under a previous case number.

court abuses its discretion when it incorrectly applies the law, *see Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014).

In the event that a plaintiff fails to effect service of the summons and complaint upon a defendant within 120 days or any extension of that deadline, NRCP 4(e)(2) mandates that the district court “must dismiss the action, *without prejudice*, as to that defendant upon motion or upon the court’s own order to show cause.” (Emphasis added.). Similarly, EDCR 1.90(d)(1) requires district court judges to consider the status of any case in which the complaint has not been served within 180 days and shall “set all cases lacking in prosecution for dismissal not less than monthly.”


Moreover, although district courts retain the inherent authority to dismiss cases with prejudice to manage their docket, “dismissal with prejudice is the most severe sanction that a court may apply [and] its use must be tempered by a careful exercise of judicial discretion.” *Hunter v. Gang*, 132 Nev. 249, 260, 377 P.3d. 448, 455 (Ct. App. 2016) (emphasis and internal quotation marks omitted). For this reason, our precedent requires district courts to analyze the factors described in *Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990), and this court applies a heightened standard of review in appeals from district court orders of dismissal with prejudice. *See Eby v. Johnston Law Office, P.C.*, 138 Nev., Adv. Op. 63, 518 P.3d 517, 527, 528-29 (Ct. App. 2022) (recognizing that the standard in *Young* applies to any order dismissing a complaint with prejudice and reversing a district court order for failure to apply the *Young* factors).

Here, the district court abused its discretion when it dismissed Morris' complaint with prejudice, in direct contravention of the plain language of NRCP 4, which specifies that service-based dismissals are to be without prejudice. See NRCP 4(e)(2) ("If service of the summons and complaint is not made upon a defendant before the 120-day service period—or any extension thereof—expires, the court must dismiss the action, *without prejudice*, as to that defendant upon motion or upon the court's own order to show cause." (emphasis added)). Respondents argue that, even though the district court's order did not comply with NRCP 4, the district court acted within its discretion as it was allowed to dismiss the case with prejudice under EDCR 1.90 and the court's own inherent authority. But, the interpretation and application of court rules must not conflict with the Nevada Rules of Civil Procedure, and therefore respondents' favored interpretation of EDCR 1.90 is unpersuasive. See *W. Mercury, Inc. v. Rix Co.*, 84 Nev. 218, 222-23, 438 P.2d 792, 795 (1968) (explaining that local rules must not conflict with the Nevada Rules of Civil Procedure); see also NRCP 83(1) (stating that "[a] judicial district may make and amend rules governing practice therein" but noting that "[a] local rule must be consistent" with the NRCP); *Nev. Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999) (stating that "whenever possible, a court will interpret a [court] rule . . . in harmony with other rules"). Moreover, to the extent that the district court dismissed Morris' action with prejudice as a case terminating sanction under its inherent authority, it abused its discretion in doing so as it failed to analyze and apply the *Young* factors

before dismissing the complaint with prejudice. *See Eby*, 138 Nev., Adv. Op. 63, 518 P.3d at 526-29.

Accordingly, we reverse the portion of the district court's order dismissing Morris' complaint with prejudice and instruct the district court, on remand, to enter an order dismissing his complaint without prejudice. And because we reverse a portion of the district court's order, we necessarily vacate the district court's order denying Morris' motion for reconsideration.

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

³Insofar as the parties raise issues that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Erika D. Ballou, District Judge
James A. Kohl, Settlement Judge
Olson, Cannon, Gormley, & Stoberski
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Messner Reeves LLP
Eighth District Court Clerk