


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEFANIE JELEVA,
Appellant,
vs.
TEAM CONSTRUCTION
MANAGEMENT, INC., A NEVADA
CORPORATION; AND STEVE RAMOS,
AN INDIVIDUAL,
Respondents.

No. 85944-COA

FILED
JUL 01 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Stefanie Jeleva appeals from a district court order dismissing her case for failure to timely effectuate service under NRCP 4(e)(2). Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Jeleva filed her complaint against respondents and on the last day of the 120-day time period to effectuate service under NRCP 4(e)(1) filed a motion for an extension of time to serve the complaint. In the motion, Jeleva stated that she had not yet attempted any service on respondents and argued there was good cause for not doing so and for obtaining an extension of time to serve the complaint because she was still receiving medical treatments related to the accident at issue in the lawsuit and the delay was necessary to better ascertain the amount of her damages. She then served respondents a little over a month later. Respondents filed a motion to dismiss based on untimely service of the complaint.

After briefing by the parties and a hearing, the district court granted the motion to dismiss. In doing so, the district court undertook a consideration of the good cause factors outlined in *Scrimmer v. Eighth*

Judicial District Court, 116 Nev. 507, 998 P.2d 1190 (2000). These factors are:

(1) difficulties in locating the defendant, (2) the defendant's efforts at evading service or concealment of improper service until after the 120-day period has lapsed, (3) the plaintiff's diligence in attempting to serve the defendant, (4) difficulties encountered by counsel, (5) the running of the applicable statute of limitations, (6) the parties' good faith attempts to settle the litigation 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 existence of the lawsuit, and (10) any extensions of time for service granted by the district court.

Id. at 516, 998 P.2d at 1195-96. The district court found that factors 1, 2, 3, 4, and 6 favored respondents based on Jeleva's failure to even attempt service and that respondents did nothing to prevent or evade service attempts. The court found factors 5, 7, and 8 favored Jeleva based on the statute of limitations expiring and no demonstration of prejudice to respondents. It found factor 9 potentially favored Jeleva but it was questionable, and that factor 10 did not apply since no extensions were given. The court also considered other factors and held that Jeleva's actions did not demonstrate due diligence in attempting service. The court ultimately concluded that there was no good cause for delaying service and granted the motion for dismissal.

Jeleva appeals, challenging the district court's analysis of the pertinent factors and its rejection of her proffered good cause, arguing that

the court demonstrated unfair bias in its consideration of the relevant factors, and that the court improperly failed to rule on her motion for an extension of time prior to making a determination on the motion to dismiss.

In the time between the district court's ruling on the motion to dismiss and the parties' briefing in this appeal, the Nevada Supreme Court entered a new opinion in *Moroney v. Young*, 138 Nev., Adv. Op. 76, 520 P.3d 358 (2022), that clarified the considerations for good cause when a timely motion for an extension of time to serve is filed. The court stated that some of the *Scrimmer* factors were still relevant to the determination, specifying that it was those factors "that relate to the plaintiff's diligence in attempting service, and to any circumstances beyond the plaintiff's control that may have resulted in the failure to timely serve the defendant," and specifically listed factors 1, 2, 3, and 10 as relevant factors, while again noting that it was a non-exhaustive list. *Id.* at 361-62. The court further specifically stated that "the statute of limitations is not a relevant factor for a timely motion to extend the service period" *Id.* at 362. The parties' briefs addressed the *Moroney* decision.

The district court's decisions concerning good cause for an extension of time to serve and a dismissal for failure to timely serve are reviewed for an abuse of discretion. *Id.* at 361. Reviewing the district court's decision and the parties' briefs on appeal, along with the other documents in the record, we conclude the district court did not abuse its discretion in making the challenged determinations. The district court undertook a full analysis of the various factors under *Scrimmer*, and the more recent decision in *Moroney* clarifies that some of those factors are relevant and others are not in ruling on a case where a timely motion to extend the time for service was filed, such as in this case. In these situations, the

Moroney case removes from consideration whether the statute of limitations has expired and the prejudice to the respondents, the two primary factors that were in Jeleva's favor under the prior *Scrimmer* analysis. Thus, with the focus on Jeleva's diligence in attempting service and whether failure to timely serve was based on factors beyond her control, the court properly determined that there was not good cause in the delay of service, particularly where, similar to the *Moroney* case, Jeleva waited until close to "the last day of the statute-of-limitations period to file suit and then waited until the service deadline to file [her] motion to extend the service period," and where she admittedly did not even attempt service during the 120-day service period. *Id.* at 362. We reject Jeleva's further contentions that other relevant factors weigh in her favor and warrant a reversal. We likewise conclude that she is not entitled to any relief based on her arguments concerning the district court's failure to rule on her motion for an extension of time. The district court considered her arguments for an extension and properly rejected them, and any failure related to the timing of this consideration or to address the motion separately did not result in any harm to Jeleva in light of her motion failing on the merits.

Finally, we conclude that relief is unwarranted as to Jeleva's claim that the district court demonstrated bias against her. Jeleva has not demonstrated that the court's actions in the underlying case were based on knowledge acquired outside of the proceedings and the court's actions do not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge

formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); see *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally “do not establish legally cognizable grounds for disqualification”); see also *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). Therefore, Jeleva is not entitled to relief based on this claim.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹To the extent Jeleva raises other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.

cc: Hon. Joseph Hardy, Jr., District Judge
Patrick N. Chapin, Settlement Judge
Marathon Law Group, PLLC
Ray Lego & Associates
Eighth District Court Clerk