

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN ELVIN TURNER,  
Appellant,  
vs.  
H. COOK; H.D.S.P.; AND JULIE  
WILLIAMS A.W.,  
Respondents.

No. 87372-COA

**FILED**

JUL 12 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

John Elvin Turner appeals from a district court order dismissing his complaint in a civil rights action. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

In December 2022, Turner, an inmate, filed a complaint in the underlying action alleging that respondents had interfered with his access to the courts. Turner subsequently obtained an order allowing him to proceed in forma pauperis and thereafter filed various motions, including a motion to amend the complaint, a motion for summary judgment, and—the day before the 120-day service period was set to expire—an “affidavit of due diligence and a motion for summons and complaint to be served upon defendants,” requesting the district court’s help with serving respondents.

The district court, ruling on Turner’s motion to amend the complaint, issued an order to show cause as to why the case should not be dismissed for the failure to timely serve respondents. The court noted that Turner was incarcerated and ordered him to respond to the order to show cause. Turner timely filed a response.

Before the show cause hearing was set to take place, at an in-chambers hearing on Turner’s motions for summary judgment in August

2023, the district court dismissed the case. Turner was not present and did not request to attend the hearing. The court found that dismissal was warranted because Turner was previously deemed a vexatious litigant in 2018 in Eighth Judicial District Court Case No. A-17-757567-C and was required, but failed, to obtain leave before filing any future complaints. The court further noted that there were other grounds for dismissal as it did not appear that the complaint had been timely or validly served, although it did not dismiss the case on that basis. Instead, in its order, the district court vacated the show cause hearing and removed it from the calendar as moot due to the fact that it dismissed the case based on Turner's vexatious litigant designation. This appeal followed.

On appeal, Turner challenges the district court's dismissal order, arguing, in relevant part, that he sought approval before filing his complaint by filing an application to proceed in forma pauperis.

Here, we conclude that the district court's summary dismissal of the case based on Turner's vexatious litigant designation was improper. Turner was issued an order granting him in forma pauperis status and the district court later issued an order to show cause for why the case should not be dismissed based on the failure to serve respondents. However, without notice to Turner, and after the case had been pending for approximately eight months, the court dismissed the case based on Turner's vexatious litigant designation in an unrelated case from 2018. Turner was not afforded notice that the district court was considering dismissal on this basis, and the court did not provide Turner with the opportunity to be heard regarding the vexatious litigant designation and whether it applied to this case, which impacted his due process rights. *Cf. Callie v. Bowling*, 123 Nev.

181, 183, 160 P.3d 878, 879 (2007) (“[P]rocedural due process requires notice and an opportunity to be heard.” (internal quotation marks omitted)).

Further, our review of the district court’s dismissal is hindered because the vexatious litigant order relied on by the district court is not included in the record, nor does the record reveal the scope or restrictions imposed by that order. *See Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 60-62, 110 P.3d 30, 42-44 (2005), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008) (explaining the factors the district court’s order must include when limiting a litigant’s access to the courts and specifically providing that “the order must be narrowly drawn to address the specific problem encountered”). And the challenged order likewise did not provide any illumination on this point, as it merely refers to the prior vexatious litigant order without further detail or discussion of the restrictions set forth in the vexatious litigant order and how they applied to the instant matter. But without such discussion or a copy of the vexatious litigant order in the record, we are unable to discern whether that order restricted Turner’s ability to file a complaint in the instant case and, similarly, whether the court here properly considered the scope of that order.<sup>1</sup> *See id.* Accordingly, under these circumstances, we reverse the

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<sup>1</sup>With regard to the district court’s note that the service issue provided a potential alternative ground for dismissal, the court did not make a definitive ruling on that issue. Notably the language used by the court merely stated that it did not “appear” that the complaint had been timely or validly served, and the court ultimately only dismissed the case based on the vexatious litigant designation. As such, we do not reach the service issue as a basis for dismissal in this appeal.

district court's order dismissing the case and remand for further proceedings.<sup>2</sup>

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge  
John Elvin Turner  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>Insofar as Turner raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.