

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY DANIELS MORAGA,
Appellant,
vs.
C/O FONSECA; AND NEVADA
DEPARTMENT OF CORRECTIONS,
Respondents.

No. 88262

FILED

AUG 14 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order setting aside a default and dismissing a complaint with prejudice. First Judicial District Court, Carson City; Kristin Luis, Judge.

Around 2019, appellant Roy Moraga, a Nevada prison inmate, sued respondent C/O Fonseca for injuries he allegedly suffered when a plexiglass window closed on his finger. The district court dismissed that complaint due to Moraga's failure to serve Fonseca, and that dismissal was affirmed on appeal. *See Moraga v. Fonseca*, Case No. 80956-COA, 2020 WL 6955669 (Ct. App. Nov. 25, 2020) (Order of Affirmance). In 2023, Moraga filed the underlying complaint against Fonseca containing similar allegations. Default was entered against Fonseca. The Attorney General's Office moved to set aside the default and to dismiss the complaint. The district court granted the motion based on res judicata and Moraga's failure to serve Fonseca, again. Moraga appeals.

Moraga argues the district court erred by overlooking his proof of service on Fonseca. We review the district court's decision for an abuse of discretion. *Blige v. Terry*, 139 Nev. Adv. Op. 60, 540 P.3d 421, 426–27 (2023) (reviewing an order setting aside default for an abuse of discretion); *Moroney v. Young*, 138 Nev. Adv. Op. 76, 520 P.3d 358, 361 (2022)

(reviewing dismissal for failure to effect timely service of process for an abuse of discretion). Before filing an answer, a defendant may move for dismissal for insufficient service of process. NRCP 12(b)(4); *see also Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 656, 6 P.3d 982, 986 (2000) (explaining that, under NRCP 12(b), “before a defendant files a responsive pleading such as an answer, that defendant may move to dismiss for lack of personal jurisdiction, insufficiency of process, and/or insufficiency of service of process”).

NRCP 55(c) provides that a district court may set aside a default for “good cause.” In asking to set aside a default for good cause, “the moving party must show some excuse for its failure to answer or otherwise defend.” *Sealed Unit Parts Co. v. Alpha, Gamma, Chapter of Gamma, Phi Beta Sorority Inc. of Reno*, 99 Nev. 641, 643, 668 P.2d 288, 289 (1983) *overruled on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997). The “good cause” standard includes NRCP 60(b)(1) grounds for relief, including “mistake, inadvertence, surprise or excusable neglect.” *Intermountain Lumber & Builders Supply, Inc. v. Glens Falls Ins. Co.*, 83 Nev. 126, 129, 424 P.2d 884, 886 (1967) (quoting NRCP 60(b)(1)).

Here, nothing in the record supports Moraga’s argument that he properly effectuated personal service on Fonseca in accordance with NRCP 4(c) (discussing how service of process is completed) or NRCP 4.2(d)(2) (providing the method for serving state employees). On the record

presented, no cause appears for this court to disturb the district court's decision. *Moroney*, 138 Nev. Adv. Op. 76, 520 P.3d at 361. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Kristin Luis, District Judge
Roy Daniels Moraga
Attorney General/Carson City
Carson City Clerk