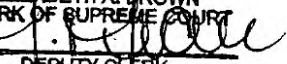


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ZARBOD AAZAMI ZANGANEH, AN
INDIVIDUAL,
Appellant,
vs.
LIFE IS BEAUTIFUL, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Respondent.

No. 86947-COA

FILED
AUG 23 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Zarbod Aazami Zanganeh appeals from a district court order dismissing his complaint for failing to timely effectuate service. Eighth Judicial District Court, Clark County; Nancy A. Becker, Senior Judge.

In September 2018, Zanganeh attended a music festival in Las Vegas organized by respondent Life is Beautiful, LLC (LIB) where security staff allegedly assaulted and battered him.¹ On September 22, 2020, Zanganeh filed a civil complaint against LIB, asserting claims for negligence, negligent hiring, and battery.² Under NRCP 4(e)(1), Zanganeh was required to serve the complaint on LIB within 120 days, by January 20, 2021, but he failed to do so.

In May 2021, Zanganeh retained new counsel, and on June 1, 2021, he filed an ex-parte application to enlarge the time for service. After a hearing, the district court set a briefing schedule and ordered Zanganeh to file a supplemental application and to serve it on LIB. At a subsequent hearing in January 2022, Zanganeh conceded that he had failed to file the

¹We recount the facts only as necessary for our disposition.

²At the time, Zanganeh's attorney was campaigning for a seat as a district court judge, and she subsequently won the election and took the bench in January 2021.

application by the briefing schedule deadline, but the district court granted a continuance and set a new briefing schedule. The court ordered the application to be filed by February 3, 2022, permitted LIB until March 3 to file a response, and set a hearing for March 25.

Despite the court's order, Zanganeh did not file the application until March 16, 2022, and did not serve LIB's registered agent with the application and complaint until March 18, only a week before the hearing. LIB received the application and complaint from its registered agent on March 21 and forwarded it to its outside general counsel on March 23. LIB did not have Nevada-licensed litigation counsel on retainer as of this date. However, LIB subsequently retained counsel and forwarded him the relevant documents on March 25.

The hearing also occurred on March 25, 2022, as originally scheduled. However, LIB did not appear, and so the district court granted Zanganeh's application for enlargement of time as unopposed. On May 26, 2022, LIB filed a motion for reconsideration and to dismiss Zanganeh's complaint for failure to effect timely service. After the hearing on LIB's motion, the district court granted reconsideration. The court determined that it was not equitable to treat Zanganeh's application for enlargement of time as unopposed where LIB had not been afforded adequate time to respond. After considering LIB's arguments against enlargement, the court entered an order denying Zanganeh's application and dismissing his complaint. On appeal, Zanganeh argues that the district court abused its discretion in granting LIB's motion for reconsideration, denying his application for enlargement of time, and dismissing his complaint.

The district court did not abuse its discretion in granting LIB's motion for reconsideration

“A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry & Tile Contractors Ass’n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). An order granting a motion for reconsideration is reviewed for an abuse of discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010).

Here, Zanganeh did not serve the supplemental application for enlargement of time on LIB until March 18, 2022—only a week before the hearing—even though the court had ordered him to do so by February 3, which would have given LIB one month to respond. Because of Zanganeh’s untimely filing and service of the application, LIB had less than one week to file a response and did not appear at the hearing. We conclude that the district court did not abuse its discretion in granting reconsideration on the basis that it would have been inequitable, under the circumstances, not to consider LIB’s opposition to Zanganeh’s application for enlargement. *AA Primo Builders*, 126 Nev. at 589, 245 P.3d at 1197. Further, LIB’s arguments and evidence opposing Zanganeh’s application for enlargement of time—made for the first time in its motion for reconsideration—were “substantially different evidence” such that reconsideration was proper. See *Masonry & Tile Contractors Ass’n*, 113 Nev. at 741, 941 P.2d at 489.

The district court did not abuse its discretion by denying Zanganeh’s request to enlarge time for service and then dismissing his complaint

A “summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed.” NRCP 4(e)(1). “If service of the summons and complaint is not made upon a defendant before the 120-day service period . . . expires, the court must dismiss the action, without prejudice, as to that defendant” NRCP 4(e)(2). The purpose of

these requirements is “to encourage diligent prosecution of complaints once they are filed.” *Scrimmer v. Eighth Jud. Dist. Ct.*, 116 Nev. 507, 513, 998 P.2d 1190, 1194 (2000). However, a party may move for an extension of the 120-day period. NRCP 4(e)(3)-(4).

Where, as here, a party files an application to enlarge time for service of process after the 120-day period has expired, the district court must first evaluate whether there was good cause for the untimely request. See NRCP 4(e)(4) (requiring a plaintiff to show that “good cause exists for the plaintiff’s failure to timely file the motion and for granting an extension of the service period”); *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 597, 245 P.3d 1198, 1201 (2010). If good cause exists to file the untimely application, the district court then evaluates the ten factors articulated in *Scrimmer* to determine if there is good cause to enlarge the time for service. 116 Nev. at 516, 998 P.2d at 1195-96; see also, *Saavedra-Sandoval*, 126 Nev. at 597, 245 P.3d at 1201. Those factors are, as follows:

- (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.

Scrimmer, 116 Nev. at 516, 998 P.2d at 1196.

We review a district court's determination of good cause under *Scrimmer* for abuse of discretion. *Id.* at 513, 998 P.2d at 1193-94. We also review the dismissal of a complaint for failure to effect timely service of process for abuse of discretion. *Saavedra-Sandoval*, 126 Nev. at 595, 245 P.3d at 1200. A district court's factual findings are entitled to deference and will be upheld when supported by substantial evidence, which is defined as "evidence that a reasonable mind might accept as adequate to support a conclusion." *First Interstate Bank of Nev. v. Jafbros Auto Body, Inc.*, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (internal quotation marks and citation omitted), *superseded by statute on other grounds as stated in Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 743, 192 P.3d 243, 255 (2008). Further, this court does not reweigh evidence or credibility on appeal. *Quintero v. McDonald*, 116 Nev. 1181, 1183-84, 14 P.3d 522, 523-24 (2000).

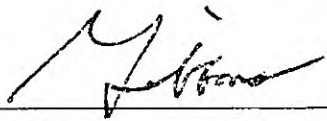
Although the district court found that Zanganeh had good cause to file an untimely application, it determined that Zanganeh had not shown good cause to enlarge the time for service. In reaching this conclusion, the court considered all the evidence and made findings on all ten *Scrimmer* factors. The district court appeared to place significant weight on factors one, two, three, six, and seven, which favored LIB. In this regard, the court found that "[Zanganeh] did not experience difficulties in locating LIB," that "LIB did not evade service or conceal improper service," and that "there was not diligence in attempting to serve LIB within the 120-day period." The court also found that Zanganeh had made no attempts to settle the case during the 120-day period and that "the delay between the expiration of the 120-day service period and service on LIB attributable to [Zanganeh] was approximately 10 months." These findings are supported by substantial

evidence in the record. *See First Interstate Bank*, 106 Nev. at 56, 787 P.2d at 767. Insofar as Zanganeh argues that the district court erred in its determination or the relative weight given to these factors in comparison to other factors, this court does not reweigh evidence or credibility on appeal. *See Quintero*, 116 Nev. at 1183, 14 P.3d at 523. Therefore, we conclude that the district court did not abuse its discretion when it found that Zanganeh had not established good cause to enlarge the time for service.

Further, because Zanganeh did not timely serve his complaint, the court did not abuse its discretion by dismissing his case. NRCP 4(e)(2).³

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Hon. Nancy A. Becker, Senior Judge
Simon Law
Hone Law
Eighth District Court Clerk

³To the extent that Zanganeh raises additional arguments not specifically addressed herein, we have considered the same and conclude they do not provide a basis for relief.