


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MIKE VIGIL,
Appellant,
vs.
MIDAS INTERNATIONAL
CORPORATION; AND OCEAN
AUTOMOTIVE, LLC,
Respondents.

No. 88335-COA

FILED

NOV 07 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Mike Vigil appeals from a district court order dismissing his civil action for lack of prosecution and for failure to comply with a court order. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Vigil filed the underlying action in the Eighth Judicial District Court against respondents Midas International Corporation and Ocean Automotive, LLC. According to Vigil's complaint, he paid respondents \$2,000 to repair a classic vehicle, but respondents failed to make any repairs before threatening to physically harm Vigil when he demanded a refund.

Vigil filed a certificate of service which stated that on August 10, 2022, a copy of the summons and complaint was served on an unknown individual working at respondents' place of business. Vigil subsequently filed an application for default judgment and writ of execution arguing respondents failed to answer or otherwise respond to the complaint.

Approximately two-months later, respondents filed a motion to quash service, arguing service was improper pursuant to NRCP 4.2(c)(1) because the employee Vigil served was not authorized to accept service for either entity. In support of this motion, respondents attached declarations stating that the employee was not authorized to accept service for either entity and copies of the Nevada Secretary of State's website, which identified respondents' registered agents. Respondents additionally filed a motion to dismiss the complaint for failure to state a claim or in the alternative a motion for a more definite statement. In response, Vigil moved to strike the motion to quash and motion to dismiss, arguing the served employee was over the age of 18 and competent to accept service and thus he was entitled to a default judgment. Vigil further argued the motion to dismiss was untimely.

The district court subsequently entered an order finding Vigil failed to comply with NRCP 4.2(c)'s requirements for serving corporate defendants and granting the motion to quash. The district court further denied the motion to dismiss but granted the motion for a more definite statement and ordered Vigil to file an amended complaint by December 27, 2022. Vigil then sought reconsideration of the district court's order, which was denied. Vigil appealed the denial of his motion for reconsideration, which the supreme court dismissed, *see Vigil v. Midas Int'l Corp.*, No. 85960, 2023 WL 1770306 (Nev. Feb. 3, 2023) (Order Dismissing Appeal), and the remittitur for that appeal was received in the district court on March 27, 2023. Following the remittitur, Vigil did not file an amended complaint as directed by the district court, nor did he attempt to effectuate proper service.

On January 25, 2024, the district court entered an order to show cause why this matter should not be dismissed for failure to prosecute and for failure to comply with the court's prior order regarding the amended complaint. Vigil did not file a response, nor did he appear at the February 25, 2024, hearing. Accordingly, the district court entered an order dismissing the case for failure to prosecute and for failing to comply with the court's prior order. This appeal followed.

This court will not disturb the decision of the district court in dismissing an action for want of prosecution unless the district court grossly abused its discretion. *Hunter v. Gang*, 132 Nev. 249, 259, 377 P.3d 448, 455 (Ct. App. 2016) (noting the gross abuse of discretion standard of review in a case that was dismissed with prejudice for want of prosecution). "The element necessary to justify dismissal for failure to prosecute is lack of diligence on the part of the plaintiff, whether individually or through counsel." *Hunter*, 132 Nev. at 259, 377 P.3d at 455. We review a district court's order quashing service for an abuse of discretion. *Abreu v. Gilmer*, 115 Nev. 308, 312-13, 985 P.2d 746, 749 (1999).

On appeal, Vigil argues the district court abused its discretion by dismissing his complaint because respondents failed to timely respond and thus he was entitled to default judgment. Vigil reasons that, because he was entitled to a default judgment, he was not required to respond to the order to show cause or otherwise prosecute his case, and thus the district court abused its discretion in dismissing the case. Vigil requests that this court reverse the dismissal and direct the entry of a default judgment in his favor.

Vigil's argument that dismissal was improper is premised on his position that service of the complaint was proper—such that the district court erroneously quashed service on respondents—and thus, we address this argument first. NRCP 4.2(c)(1) prescribes how litigants must effectuate service on entities registered to do business in Nevada. Notably, litigants cannot simply serve an employee of the entity but must instead serve one of the individuals identified in NRCP 4.2(c)(1)(A)(i)-(x). Here Vigil failed to serve respondents' registered agents, and instead served his complaint on an employee who was not authorized to accept service. Thus, we conclude that the district court did not abuse its discretion in granting the motion to quash service. And because the district court did not abuse its discretion in granting the motion to quash, the district court likewise did not abuse its discretion in failing to enter a default judgment as there was no basis for default judgment due to the inadequate service.


Outside of Vigil's challenge to the motion to quash, he presents no cogent argument as to how the district court grossly abused its discretion in dismissing the underlying matter for lack of prosecution. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider claims that are unsupported by cogent arguments). Thus, he has failed to demonstrate a basis for relief with regard to that portion of the challenged order.

Additionally, Vigil's informal brief fails to address the portion of the district court's order dismissing the complaint for failing to comply with the court's prior order directing him to file an amended complaint. As a result, he has waived any such challenge. *See Hung v. Berhad*, 138 Nev.

547, 547-48, 513 P.3d 1285, 1286 (Ct. App. 2022) (noting that, where an appellant fails to challenge each alternative ground for dismissal, these challenges are waived, “thereby foreclosing their appeal as it concerns the district court’s dismissal ruling”).

Accordingly, for the reasons set forth above, we affirm the district court’s dismissal of Vigil’s case.¹

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Veronica Barisich, District Judge
Mike Vigil
Kravitz Schnitzer Johnson Watson & Zeppenfeld, Chtd.
Eighth District Court Clerk

¹Insofar as Vigil 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.