

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYAN PHILLIP BONHAM,  
Appellant,


vs.

THE STATE OF NEVADA; OFFICE OF  
SECRETARY OF STATE; BARBARA K.  
CEGAVSKE; THE ELEVENTH  
JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE  
COUNTY OF PERSHING; PERSHING  
COUNTY; AND THE HONORABLE JIM  
C. SHIRLEY, DISTRICT JUDGE,  
Respondents.

No. 87850-COA

**FILED**

NOV 25 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Bryan Phillip Bonham appeals from a district court order dismissing his civil rights action. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

In November 2022, Bonham filed a civil rights complaint against respondents the State of Nevada on relation of the office of the Secretary of State, Barbara K. Cegavske (the Secretary of State at the time of filing), the Eleventh Judicial District Court (Eleventh Judicial District), Pershing County, and Judge Jim C. Shirley based on alleged constitutional violations and state tort claims related to Cegavske's purported failure to provide him with copies of certain senate bills.<sup>1</sup> Bonham subsequently sought an extension of time to serve respondents. After holding a hearing

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<sup>1</sup>The district court eventually dismissed the Eleventh Judicial District, Judge Shirley, and Pershing County per Bonham's request.

on an order to show cause regarding jurisdiction, the viability of his claims, and whether good cause existed to extend the service deadline, the district court granted Bonham's request and gave him an additional 60 days, until June 20, 2023, to serve respondents. Declarations of service in the record state that Bonham served "The State of Nevada Ex Rel" at the Attorney General's office on June 30, 2023, the "State of Nevada – Office Secretary of State" on July 17, 2023, at 101 N. Carson Street, and Cegavske on July 17, 2023, at the Nevada Secretary of State's office.

In October 2023, the Office of the Secretary of State and Cegavske<sup>2</sup> filed a motion to dismiss arguing that Bonham's complaint should be dismissed on claim and issue preclusion grounds based on a prior lawsuit that Bonham unsuccessfully filed in 2019, the failure to properly serve the Office of the Secretary of State and Cegavske, lack of standing, and the failure to adequately allege any claims. With respect to service, the Office of the Secretary of State contended that Bonham served "The State of Nevada Ex Rel" at the Attorney General's office, which was insufficient to serve that defendant. Further, to the extent that Bonham purported to serve Cegavske at the Secretary of State's office, Cegavske argued Bonham failed to demonstrate that service at her prior office was sufficient when she was no longer in office at that time.

Bonham opposed the motion, arguing, in relevant part, that he properly served the Office of the Secretary of State and Cegavske and met the extended service deadline. He also claimed that the Nevada Supreme

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<sup>2</sup>Although Francisco Aguilar, the current Secretary of State, was not a named defendant in the proceedings before the district court, the motion to dismiss noted that Aguilar was automatically substituted as a defendant for Cegavske for all claims brought against the Secretary of State in an official capacity.

Court has held that merely handing the summons and complaint to prison officials at the facility for mailing is sufficient to start the process of serving the summons and complaint. The Office of the Secretary of State and Cegavske filed a reply, asserting that Bonham failed to respond to their claim preclusion, issue preclusion, and standing arguments, which constituted a concession that his lawsuit was barred. Moreover, they argued that he failed to refute their argument that they were not properly served and that he failed to adequately plead any cause of action.

Following a hearing, which Bonham attended, the district court granted the motion to dismiss based on Bonham's failure to properly effectuate service and on issue preclusion grounds. The court found that service was not effectuated on the Attorney General's office for either the Office of the Secretary of State or Cegavske, as required by NRCP 4.2(d)(1) and (2) (setting forth methods for serving the State of Nevada, its public entities and political subdivisions, and their officers and employees), because Bonham only served "The State of Nevada Ex Rel" at the Attorney General's office. The court also found that Bonham failed to demonstrate that serving Cegavske at the Secretary of State's office was sufficient given that she was no longer in that office at the time service was attempted.

The district court further concluded that issue preclusion warranted dismissal of the complaint against the Office of the Secretary of State and Cegavske. On this point, the court noted that Bonham had previously sued Cegavske in her official and individual capacities for violations of her oath of office and the Nevada and United States constitutions because her office was not in possession of certain senate bills in the Eleventh Judicial District, but his claims were dismissed and this court affirmed that dismissal in *Bonham v. State*, No. 85267-COA, 2023 WL

2720940, at \*1-2 (Nev. Ct. App. Mar. 30, 2023) (Order of Affirmance). This appeal followed.

On appeal, Bonham challenges the district court's dismissal of his complaint, contending that he properly served the Office of the Secretary of State and Cegavske.<sup>3</sup>

We review a dismissal based on the failure to timely serve process for an abuse of discretion. *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010). NRCP 4.2(d) provides the methods to serve the State of Nevada, its public entities and subdivisions, and its current and former public officers or employees. Under NRCP 4.2(d)(1), the State and any of its public entities must be served by delivering a copy of the summons and complaint to the Attorney General, or a person designated to receive service of process, at the Office of the Attorney General in Carson City, and the person serving in the office of the administrative head of the named public entity. Similarly, under NRCP 4.2(d)(2), when a current or former public officer or employee is sued, the plaintiff must serve a copy of the summons and complaint on the Attorney General, or a person designated to receive service of process, at the Office of the Attorney General in Carson City, and “the current or former public

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<sup>3</sup>Although Bonham also purports to challenge the district court's decision to dismiss his case against the Eleventh Judicial District Court, Judge Shirley, and Pershing County, the court's order reflects that he requested that all of these parties be dismissed. On appeal, Bonham does not dispute that he voluntarily dismissed those parties. As a result, we confine our analysis to the dismissal of his claims against the Office of the Secretary of State and Cegavske. *See Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) (“Parties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below.” (internal quotation marks and alteration omitted)).

officer or employee, or an agent designated by him or her to receive service of process.”

In this case, Bonham was required to serve process on the Office of the Secretary of State and former Secretary of State Cegavske by June 20, 2023, per the extension granted by the district court. Bonham did not request another extension, and he acknowledges in his brief on appeal that he did not even place his service requests to the sheriff’s office in the mail until June 20, 2023, which made his attempts at effectuating service on the Office of the Secretary of State and Cegavske untimely. Thus, we conclude that the district court properly dismissed the case based on Bonham’s failure to timely serve these parties. *See* NRCP 4(e) (“If service of the summons and complaint is not made upon a defendant before the 120-day service period—or any extension thereof—expires, the court must dismiss the action, without prejudice, as to that defendant upon motion or upon the court’s own order to show cause.”).

In addition to being untimely, Bonham’s attempts at service were also insufficient under NRCP 4.2(d). With respect to the Office of the Secretary of State, the district court found that Bonham failed to effectuate service because he only served “The State of Nevada Ex Rel” at the Attorney General’s office without identifying the Secretary of State as the party being served. The declaration of service supports this finding, and Bonham, therefore, has not demonstrated that he properly served the Office of the Secretary of State. As such, we cannot conclude that the district court abused its discretion in dismissing Bonham’s case with respect to the Office of the Secretary of State. *See Saavedra-Sandoval*, 126 Nev. at 595, 245 P.3d at 1200.

Likewise, Bonham failed to properly serve Cegavske pursuant to NRCP 4.2(d)(2) because he only served her at the Secretary of State's office, which was insufficient under the rule. Bonham argues that he requested that the sheriff's office serve Cegavske personally at her home address, but even if such service had been completed, Bonham nonetheless failed to comply with NRCP 4.2(d)(2)(A), which requires that he serve her at the Attorney General's office. As a result, he failed to properly serve Cegavske, and thus the district court did not abuse its discretion in dismissing Bonham's complaint with respect to Cegavske. *See Saavedra-Sandoval*, 126 Nev. at 595, 245 P.3d at 1200.

In addition to dismissing Bonham's claims against the Office of the Secretary of State and Cegavske on service grounds, the district court also determined that the application of issue preclusion warranted dismissal of Bonham's complaint. But Bonham does not challenge that determination on appeal, and he has therefore waived any challenge to that portion of the district court's order. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Moreover, Bonham's failure to address the district court's alternate basis for dismissing his complaint as to the Office of the Secretary of State and Cegavske supports affirming the district court's dismissal order in its entirety.<sup>4</sup> *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

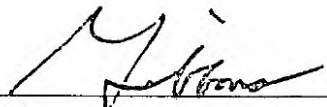
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<sup>4</sup>Because we affirm the dismissal on preclusion grounds, we further affirm the district court's decision to dismiss this matter with prejudice, rather than without prejudice. *See, e.g., Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 255, 321 P.3d 912, 914 (2014) (affirming a district court's dismissal with prejudice on preclusion grounds).


dismissal, these challenges are waived, "thereby foreclosing their appeal as it concerns the district court's dismissal ruling"). As such, we affirm the district court's dismissal on that basis as well.

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

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

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

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

cc: Hon. Gloria Sturman, District Judge  
Bryan Phillip Bonham  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk

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<sup>5</sup>Insofar as Bonham 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.