

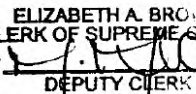
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BROOKE RUELAS,
Appellant,
vs.
ABRAM RUELAS,
Respondent.

No. 88567-COA

FILED

DEC 18 2024

ELIZABETH A. BROOKS
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Brooke Ruelas appeals from a district court order dismissing her complaint for divorce for failure to effectuate service. Eighth Judicial District Court, Family Division, Clark County; Regina M. McConnell, Judge.

Brooke filed a complaint for divorce against respondent Abram Ruelas in October 2023 and indicated therein that Abram was incarcerated. She thereafter filed an affidavit of service from a sheriff's deputy stating that Abram was served by leaving the summons and complaint with his aunt at an address in North Las Vegas. At a January 2024 hearing, the district court asked Brooke whether Abram had been validly served, and Brooke responded that Abram was no longer incarcerated, but asserted that she was "pretty sure" Abram lives at his aunt's house but she could not verify he was served. Ostensibly in light of this statement, the court informed Brooke that she needed to have Abram properly served.

Brooke subsequently filed an amended complaint and an ex parte motion for alternate service, stating that she did not know Abram's address and Abram would not tell her where he lived. But the district court denied Brooke's motion for alternate service, concluding that she failed to

accompany her request with an affidavit of due diligence. Following the denial of her motion, Brooke filed two affidavits of attempted service in February and March 2024. The first affidavit was from Joe Zavala, an individual not a party to the action who averred that he was over the age of 18. Zavala's affidavit stated that, on January 27, 2024, he verbally informed Abram, in person, of the court documents he needed to receive while Abram was standing outside his vehicle. The affidavit further indicated that Abram refused to take the documents and that, when they were given to him he "only handled [them] to throw them on the [r]oad" and then he drove off. Confusingly, the affidavit indicates that, based on these events, "[n]o further attempts were necessary" while also providing that "[o]nly a Sheriff's Deputy may be able to serve [the documents] if [Abram] can be located." The second affidavit was from a sheriff's deputy indicating that the sheriff was unable to serve Abram. Brooke did not file another motion requesting to serve Abram via alternate means.

In April 2024, the district court issued an order to show cause why the case should not be dismissed for failure to timely effectuate service, as required by NRCP 4(c)(1)(B), and informed Brooke that if she did not respond, her case would be dismissed. Alternatively, the order noted that Brooke could respond and explain why she was unable to serve Abram and/or request additional time for service or file an affidavit of service in the event she had effectuated service but forgot to file such an affidavit.

After receiving no response to the show cause order, the district court entered an order dismissing the case without prejudice. In dismissing the case, the court noted that the matter was before the court on an order to show cause for failure to serve pursuant to NRCP 4(e)(2) and that there

had been no filings after the show cause order issued.¹ The court further found that the 120-day service period ended on February 17, 2024, and explained that it had rejected Brooke's January 2024 motion for alternate service due to the requirement that Abram be personally served. The court went on to find that Brooke subsequently filed affidavits of attempted service but failed to request service by publication or other alternative means, and therefore Brooke had failed to properly serve Abram. This appeal followed.

On appeal, Brooke challenges the district court's dismissal of her complaint. This court reviews an order dismissing a complaint for failure to effect timely service of process for an abuse of discretion. *Moroney v. Young*, 138 Nev., Adv. Op. 76, 520 P.3d 358, 361 (2022). NRCP 4(e) provides time limits for service of process, generally providing that "[t]he summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule." NRCP 4(e)(1). Under NRCP 4(e)(2), "[i]f 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 upon motion or upon the court's own order to show cause."

Here, after issuing an order to show cause regarding service and receiving no response from Brooke, the district court dismissed her complaint based on her failure to properly serve Abram within the 120-day

¹More specifically, the district court's order stated that the order to show cause was for "want of prosecution pursuant to NRCP 4(e)(2)." Given that the service issue was the only issue raised by the court, and the citation to NRCP 4(e)(2), which deals with service of process, it appears that the "want of prosecution" language was erroneously included in the order.

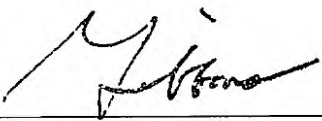
time period set forth in NRCP 4(e). However, as detailed above, the record demonstrates that, prior to the issuance of the order to show cause, Brooke filed an affidavit of attempted service from Zavala which appears to indicate that Abram was served by Zavala. Notably, the affidavit reflects that Zavala informed Abram, in person, of the court documents he needed to receive and that Zavala gave those documents to Abram who took the documents and threw them on the street before driving away. *See* NRCP 4.2(a)(1) (providing that service may be made on an individual by delivering a copy of the summons and complaint to the individual personally). The affidavit indicates that Zavala's service attempt took place on January 27, 2024, which would fall within the 120-day service period.


The district court's show cause order did not address or acknowledge Zavala's affidavit, which was filed before the show cause order issued. And while the affidavit is noted in the dismissal order, the order simply states that Brooke submitted this affidavit. The court does not address the contents of Zavala's affidavit, much less make any findings regarding the credibility of the affidavit or the propriety of Zavala's apparent service of the summons and complaint upon Abrams. And while the order states, after discussing the affidavits Brooke submitted, that she failed to request service via alternate means, if—as the affidavit suggests—Zavala properly served Abrams within the 120-day period, a request for alternate service would be unnecessary.

While we recognize that Brooke failed to respond to the district court's show cause order, under the circumstances presented here, we decline to apply the waiver doctrine as we cannot conclude with certainty that the district court properly exercised its discretion in dismissing Brooke's complaint for failure to effectuate service in light of Zavala's

affidavit. *See Moroney*, 138 Nev., Adv. Op. 76, 520 P.3d at 361. Accordingly, we reverse the district court's order dismissing the case without prejudice and remand this matter to the district court to fully evaluate Zavala's affidavit of attempted service in the first instance and assess whether Brooke's complaint was, in fact, properly and timely served on Abrams in light of the statements set forth in the affidavit. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance.").

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Regina M. McConnell, District Judge, Family Division
Brooke Ruelas
Abram Ruelas
Eighth District Court Clerk