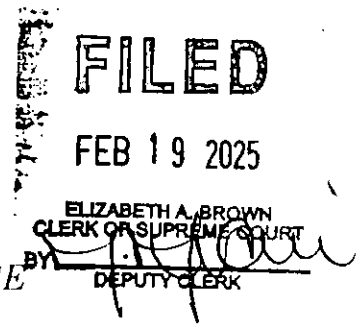
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN LARCE,
Appellant,
vs.
MAGGIANO'S LITTLE ITALY; AND BRINKER INTERNATIONAL,
Respondents.

No. 88164-COA



ORDER OF AFFIRMANCE

Brian Larce appeals from an order dismissing his complaint in a tort action. Eighth Judicial District Court, Clark County; Bita Yeager, Judge.

While on vacation in Las Vegas, appellant Brian Larce was struck by a falling misting fan during dinner at Maggiano's Little Italy (MLI). Larce alleged that he sustained injuries as a result of the incident. He subsequently brought a negligence claim against respondents MLI and Brinker International (Brinker).[1]

Larce filed his complaint on June 28, 2023, but he did not make efforts to serve either party until October 2023. Based on the filing date of Larce's complaint, the 120-day time limit to serve expired on October 26. *See* NRCP 4(e)(1).

Larce attempted to serve MLI at its Las Vegas Boulevard restaurant on October 3, 2023, by leaving copies of the summons and

[1]Brinker lists Maggiano's Holding Corporation and Maggiano's Inc. in its NRAP 26.1 disclosure statement regarding parent corporations.

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complaint with the assistant general manager at the restaurant.[2] Larce then attempted to serve Brinker at its headquarters in Dallas, Texas, by leaving copies of the summons and complaint with a senior paralegal at the location.

On November 6, having not been served with answers, Larce filed a notice of intent to take a default against each respondent. Upon receiving certified mail copies of the notices, respondents filed a motion to dismiss for insufficient service of process. In their motion to dismiss, respondents argued that Larce's summons and complaint was improperly served on Brinker's senior paralegal, who they maintained had no authority to accept service on behalf of Brinker pursuant to NRCP 4.2(c)(1) and NRCP 4.3(a)(3). Therefore, they asked the district court to dismiss Larce's complaint without prejudice.

Larce responded that service on Brinker's senior paralegal put it on notice of the lawsuit and that respondents did not dispute that the senior paralegal was served at Brinker's correct address. Larce also filed a countermotion to extend time to serve respondents, summarily arguing that he acted in good faith in attempting to serve Brinker.[3]

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[2]Larce's complaint was eventually dismissed with respect to MLI for insufficient service of process. Although named as a respondent, in his opening brief, Larce does not challenge the district court's dismissal of MLI on appeal and therefore we need not address the district court's dismissal of MLI below. *See Powell v. Liberty Mut. Fire Ins.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived).

[3]Larce also moved to amend his complaint. Because Larce does not challenge the district court's denial of that request, we do not address it in this order.

Respondents argued in their reply that alleged notice is not a substitute for proper service in Nevada. They also opposed Larce's countermotion, arguing that it was deficient because he sought to extend time after the 120-day service period but failed to show good cause as to why he did not move to extend time within the 120-day period and why such an extension was necessary under the *Scrimer v. Eighth Judicial District Court*, 116 Nev. 507, 998 P.2d 1190 (2000), factors.

After a hearing, the district court entered an order dismissing Larce's complaint. The court found that the senior paralegal for Brinker did not qualify as an individual fit for service on behalf of a corporation under NRCP 4.2(c), and, therefore, service was ineffective. The court also agreed that, even if Brinker was on notice of the lawsuit, notice was not a substitute for service of process pursuant to *C.H.A. Venture v. G.C. Wallace Consulting Engineers*, 106 Nev. 381, 384, 794 P.2d 707, 709 (1990). As to Larce's countermotion, the court found that he failed to offer any evidence supporting a showing of good cause on either (1) why the motion to extend service was filed more than a month after the deadline for service had passed, or (2) why good cause existed to grant the motion to extend the time for service as required by *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 597, 245 P.3d 1198, 1201 (2010), and *Scrimer*, 116 Nev. at 516, 998 P.2d 1195-96. Larce now appeals the district court's order.

On appeal, Larce argues that Brinker was properly served by way of service upon a senior paralegal employed by Brinker at its business address. He argues that even if the authorized individual was not served, respondents were put on notice of the lawsuit through service on the senior paralegal. He also argues that he had good cause for his untimely countermotion for an extension of time to effect service based on the

foregoing as well as his assertion that, insofar as service on the senior paralegal was improper, Brinker concealed that fact from him until after the time for service had expired. Therefore, he argues the district court abused its discretion by granting respondents' motion to dismiss and denying his countermotion to extend the time to serve Brinker.

Respondents contend that the attempted service on Brinker by Larce violated NRCP 4.2(c)(1) and NRCP 4.3(a)(3) and that notice is not a substitute for service of process. They also argue that Larce failed to offer any evidence to show good cause for his untimely motion to extend the time for service. We agree with Brinker.

This court reviews both the district court's dismissal for failure to effectuate timely service of process and its determination as to whether good cause existed to extend the time for service for an abuse of discretion. *Moroney v. Young*, 138 Nev. 769, 770, 520 P.3d 358, 361 (2022). If service of a summons and complaint upon a defendant is not made within 120 days from the date of filing, a court must dismiss the action without prejudice upon motion. NRCP 4(e)(2). And NRCP 4.2(c)(1) sets forth a list of individuals that may properly receive service for companies in Nevada. NRCP 4.3(a)(3) uses the same list when determining whether a corporation outside of Nevada but within the United States was properly served. As relevant here, for a corporation to have been properly served under these rules, the individual who received service on its behalf must have been: "(i) the registered agent of the entity or association; (ii) any officer or director of a corporation; . . . (ix) any managing or general agent of any entity or association; or (x) any other agent authorized by appointment or by law to receive service of process." NRCP 4.2(c)(1).

Where the defendant has presented uncontradicted evidence that the person the plaintiff served was not an individual that could receive service pursuant to NRCP 4.2(c)(1) and NRCP 4.3(a)(3), the district court is to take these denials as true. *Foster v. Lewis*, 78 Nev. 330, 333, 372 P.2d 679, 680 (1962). "In the absence of actual specific appointment or authorization, and in the absence of a statute conferring authority, an agency to accept service of process will not be implied." *Id.*

Larce has not directed this court's attention to any evidence in the record to controvert respondents' contention that the senior paralegal was not authorized to accept service of process.[1] Without actual specific appointment or authorization, we cannot imply the senior paralegal had agency to accept service of process. *Id.* We conclude that because the district court had to accept respondents' uncontroverted denials as true, it did not abuse its discretion in finding that proper service was not effectuated within the 120-day period, and, therefore, dismissal was proper unless Taylor satisfied the requirements for an extension of time for service. *Id.*

Turning to Larce's countermotion for an extension of time to effectuate service, when a plaintiff seeks such an extension, the district court must consider whether they have established good cause for an extension by applying the ten factors set forth in *Scrimer*. 116 Nev. at 516, 998 P.2d at 1195-96. However, if the plaintiff fails to move for an extension of time during the 120-day service period, the district court must also

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[1]Although Larce argues that Brinker did not contest that the corporate headquarters in Texas was the proper place to effectuate service, the question is not one of location but whether the person served was authorized to accept such service. *See Foster*, 78 Nev. at 333, 372 P.2d at 680.

consider whether there was good cause for the failure to timely seek an extension using certain of the *Scrimer* factors specifically enumerated in *Saavedra-Sandoval*. 126 Nev. at 597, 245 P.3d at 1201. In evaluating an untimely motion for an extension of time to serve process, the district court should consider whether the defendant evaded service or concealed improper service, whether the plaintiff was diligent in attempting to serve the defendant, and the defendant's knowledge of the existence of the lawsuit. The court has discretion to consider any additional *Scrimer* factors not enumerated. *Id.*

On appeal Larce argues that there was good cause for his untimely motion for an extension of time to serve process. In the proceedings below, however, Larce did not cite to *Scrimer* in his countermotion, nor did he present any facts or meaningful argument to support good cause for his delay in seeking to extend the time to serve process.[5] Further, we decline to consider Larce's untimely argument that respondents hindered his attempts at timely service by concealing that Brinker's paralegal could not accept service, because it was raised for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal").

On appeal, Larce quotes the portion of *Saavedra-Sandoval* that identified three *Scrimer* factors that the district court must consider in determining whether the plaintiff showed good cause for failing to timely

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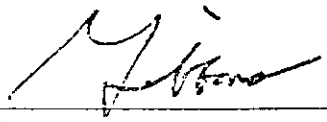
[5]We acknowledge that the *Scrimer* factors may have been addressed at the hearing. Nevertheless, transcripts were not provided on appeal, and we must presume that the missing transcripts supported the court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

move for an extension of the time to serve process, without developing any cogent argument supporting the applicability of the factors in his favor. We therefore also decline to consider this argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Further, Larce fails to separately address whether there was good cause for the extension itself, even if he could have demonstrated good cause for having failed to move for an extension of time to serve within the 120 days allotted for service. Thus, Larce has failed to analyze, either below or on appeal, the majority of the *Scrimer* factors necessary to support good cause for extending the time to serve. Consequently, we conclude that the district court did not abuse its discretion in denying his countermotion to extend the time to serve Brinker. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]

_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

[6]Insofar as Larce 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.

cc: Hon. Bita Yeager, District Judge
The Law Firm of C. Benjamin Scroggins, Chtd.
Law Offices of Garrett T. Ogata
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Eighth District Court Clerk