

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TONEY ANTHONY WHITE, III,
Appellant,


vs.

JACOB LAUB, CORRECTIONS
OFFICER; CORBIN NEUWIRTH,
CORRECTIONS OFFICER; A.
ISHMAIL, CORRECTIONS OFFICER;
MARTINEZ, SENIOR CORRECTIONS
OFFICER; WILLIAM OBLAK, SENIOR
CORRECTIONS OFFICER; GUSTAVO
SANCHEZ, CORRECTIONS
SERGEANT; DEAN ONTIVEROS,
CORRECTIONS LIEUTENANT;
JONATHAN BINDER, CORRECTIONS
LIEUTENANT; JEREMY BEAN,
ASSOCIATE WARDEN AT HDSP;
RONALD OLIVER, ASSOCIATE
WARDEN AT HDSP; GARY PICCININI,
ASSOCIATE WARDEN AT HDSP;
CALVIN JOHNSON, WARDEN AT
HDSP; MICHAEL MINEV, MEDICAL
DIRECTOR OF NDOC; CHARLES
DANIELS, DIRECTOR OF NDOC;
KAMEISHA PALMER, ASSISTANT TO
ASSOCIATE WARDEN PICCININI;
JACQUES GRAHAM, LAW LIBRARY
SUPERVISOR AT HDSP; BENITO
GUTIERREZ, DIRECTOR OF NURSING
AT HDSP; NICK PERET; JAYME
(JAIMIE) CABRERA; GEORGE AVENA,
CHARGE NURSE AT HDSP; AND
JOSEPH AVENA, CHARGE NURSE AT
HDSP,
Respondents.

No. 88748-COA

FILED

MAR 04 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Toney Anthony White, III, appeals from a district court order dismissing his complaint for lack of service of process. Eighth Judicial District Court, Clark County; Michael Villani, Senior Judge.

On August 2, 2021, White—an incarcerated litigant—filed a 42 U.S.C. § 1983 complaint against twenty-one named Nevada Department of Corrections (NDOC) employees. Shortly after filing his complaint, White filed three motions seeking to extend his copy-work limit and requesting assistance in serving the complaint in this matter. White asserted that several procedural and administrative roadblocks—including the interference of one of the defendants who worked at the High Desert State Prison (HDSP) law library—prevented him from timely serving the complaint in this matter. These motions remained unresolved until 2023. Ultimately, White was unable to serve his complaint within the initial 120-day time period and the district court dismissed his complaint. White appealed that decision, *see White v. Laub*, Docket No. 84822-COA, 2022 WL 17592177 (Nev. Ct. App. Dec. 12, 2022) (Order of Reversal and Remand), and this court reversed the order of dismissal due to the district court clerk’s office’s failure to file White’s timely motion for transport until the date of the hearing, resulting in the district court incorrectly considering the matter as unopposed. Following further proceedings on remand, when White still had not served the complaint on respondents, the district court issued an order to show cause regarding the possible dismissal of the complaint on that basis on August 8, 2023.

Following its review of White’s written response to the show cause order, the district court filed an order on October 3, 2023, finding that White demonstrated good cause for his failure to serve the complaint within

120 days of filing, extending the service period for 120 days following entry of the order, and extending White's work-copy limit.

On February 20, 2024, the district court held a status check in chambers wherein it noted that service had still not been completed. Nonetheless, the court's minute order from the February 20 status check reflects that "for good cause appearing" the time to perfect service was continued to April 9, 2024. The district court further continued the status check until April 9, warning White that this would be the final continuance of the matter.

On February 26, 2024, White filed ten declarations of service, reflecting that, on February 13, 2024, an authorized agent of the Clark County Sherriff's Department served the summons and complaint on the following respondents via an employee of the Nevada Department of Corrections at its director's office in Carson City: (1) Ronald Oliver, Assistant Warden High Desert State Prison; (2) Gustavo Sanchez; (3) Joseph Avena; (4) Dean Ontiveros; (5) Jeremy Bean, High Desert State Prison Associate Warden; (6) High Desert State Prison Seargent William Oblak; and (7) Lieutenant Jonahan Binder. The record also indicates that the agent attempted to serve the following individuals but was unable to do so as they no longer worked at NDOC: (1) Jaymie Cabrerra; (2) Nick Peret; and (3) HDSP Director of Nursing Benito Gutierrez.

The district court subsequently held its April 9 status check and, despite the filing of the declarations of service, determined that the case should be dismissed for failure to perfect service of process. An order to that effect was entered on May 9, 2024. In that order, the court found that, following the February 20 status check, White was given until April 9, 2024, to complete service on respondents. And, without noting or

mentioning the declarations of service White had filed, the court further found that “to date, the Plaintiff has not filed a proof of service” and that “the Complaint has not been served.” As a result, the district court dismissed White’s complaint without prejudice. White now appeals.

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.” (Emphasis added). This court reviews a district court’s dismissal for failure to effect timely service of process for an abuse of discretion. *Moroney v. Young*, 138 Nev. 769, 770, 520 P.3d 358, 361 (2022).

Having reviewed White’s informal brief and the record on appeal, we conclude that the district court abused its discretion by dismissing White’s complaint as to respondents Ronald Oliver, Gustavo Sanchez, Joseph Avena, Dean Ontiveros, Jeremy Bean, William Oblak, and Jonathan Binder, as White filed proofs of service as to those respondents prior to the expiration of the district court’s extension of time to serve them, and the district court did not make any findings suggesting that service of process as to those respondents was somehow incomplete or insufficient. *See* NRCP 4(e)(2). We therefore reverse the portion of the district court’s order dismissing White’s complaint as to these respondents and remand this matter for further proceedings as to those parties.

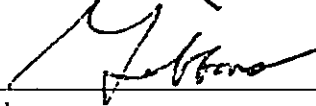
With regard to the remaining fourteen respondents, however, we discern no abuse of discretion in the district court’s decision to dismiss the complaint. Although White filed proofs of service as to the seven respondents discussed above, our review of the record demonstrates that he did not file proofs of service for or otherwise demonstrate that he served the

remaining fourteen respondents. White did file documentation indicating that he attempted, but failed, to serve respondents Jaymie Cabrerra, Nick Peret, and Benito Gutierrez, but he did not file anything further regarding these three respondents or otherwise take steps to demonstrate good cause for his failure to serve them. Moreover, White did not file anything showing he even attempted service on the remaining named respondents. Nor did he file anything to attempt to show good cause for his failure to serve these parties.

Accordingly, we discern no abuse of discretion in the district court's dismissal of White's complaint, without prejudice, as to the remaining fourteen respondents. *See* NRCP 4(e)(2); *Moroney*, 138 Nev. at 770, 520 P.3d at 361. As a result, we affirm the dismissal order as to these fourteen respondents.

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 14
Hon. Michael Villani, Senior Judge
Toney Anthony White, III
Attorney General/Carson City
Eighth District Court Clerk