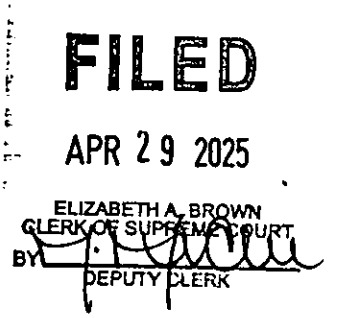
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES SPLOND,
Appellant,
vs.
CHARLES DANIELS; CALVIN JOHNSON; MICHAEL MINEV; JAMES SCALLY; WILLIAM KULOLIA; JAMES CABRRERA; BEN GUTTIEREZ; SANDRA GOBLER,
Respondents.[1]

No. 89199-COA



ORDER OF AFFIRMANCE

Charles Splond appeals from a district court order dismissing his complaint in a civil rights action without prejudice. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.[2]

On May 1, 2023, Splond, an inmate, commenced the underlying civil rights action against various officials and employees of the Nevada Department of Corrections (collectively referred to herein as respondents). The same day, Splond applied to proceed in forma pauperis, which the district court granted approximately two months later. From that time, Splond took no further action in this case until February 26, 2024, when he

[1]We direct the clerk of this court to amend the caption on this court's docket to conform with the caption on this order.

[2]Although Judge Bluth entered the order dismissing Splond's complaint, Judge Israel conducted the underlying hearing to show cause as to why Splond's complaint should not be dismissed and issued minutes reflecting his oral decision that dismissal without prejudice was appropriate.

presented a summons to the district court clerk, which the district court clerk issued the next day.

In late April 2024, the district court entered an order directing Splond to appear at a hearing in June to show cause why his case should not be dismissed based on his failure to timely effect service of process in accordance with NRCP 4(e)(2). Rather than filing some form of response to that order, Splond filed several declarations of service over the next few weeks, indicating that certain respondents had been served with the summons and complaint and that Splond was unable to do so with respect to several other respondents. Splond failed to appear at the June 2024 show-cause hearing, and the district court dismissed his complaint without prejudice on grounds that he did not timely effect service of process in accordance with NRCP 4.[3] This appeal followed.

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[3]The district court specifically found in its order that "the summons was issued and not served within 120 days pursuant to [NRCP] 4." We construe this finding to mean that the district court dismissed Splond's complaint based on his failure to serve both the summons and complaint within the 120-day service period, which is consistent with the procedural history of this case and was the complete deficiency identified in the court's show-cause order. *See Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 895, 266 P.3d 602, 608 (2011) (providing that courts construe an ambiguous order by consulting the record and proceedings giving rise to the order). While we recognize that the district court's dismissal order could be read to suggest that the court determined the summons was issued within the 120-day service period, which is incorrect since the summons did not issue until approximately six months after that period expired, any error in that respect is harmless in light of our analysis in this order. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that, to establish an error is not harmless and reversal is warranted, "the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"); *cf.* NRCP 61 ("At every stage of the proceeding, the court must

On appeal, Splond contends the district court improperly dismissed his complaint for failure to timely serve respondents with a copy of the summons and complaint. After commencing an action by filing a complaint, the plaintiff must submit a summons to the district court clerk for "issuance under signature and seal." NRCP 4(b). Once the summons is issued, the plaintiff must then serve a copy of the summons with the complaint upon each defendant in the action, which must be accomplished within 120 days after the complaint was filed. NRCP 4(c)(2), (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 case." 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).

In disputing whether the district court could properly dismiss his case for failure to timely effect service of process, Splond initially asserts that circumstances beyond his control prevented him from serving respondents with a copy of the summons and complaint within the 120-day service period. Moreover, Splond contends that, despite his failure to timely serve respondents, his case should be permitted to proceed because he eventually served certain of them with a copy of the summons and complaint after the district court clerk issued the summons under signature and seal in February 2024.

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disregard all errors and defects that do not affect any party's substantial rights.").

As detailed above, NRCP 4(e) requires service to be effected within 120 days *after the complaint was filed*, and dismissal of an action where a plaintiff fails to comply, regardless of when the summons issues. Nevertheless, the rule affords some leeway in that the district court must grant a plaintiff who is unable to timely effect service of process an extension of time to do so, provided that the plaintiff moves for such relief within the 120-day service period and establishes good cause for the extension. *See* NRCP 4(e)(3) (stating the same); *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 596-97, 245 P.3d 1198, 1201 (2010) (discussing the procedural requirements for obtaining an extension of time to serve process). And when a plaintiff brings such a motion after the expiration of the 120-day service period, the district court must excuse the belated request for relief, provided that there is good cause for doing so, and consider whether there is also good cause for granting an extension of time. *See* NRCP 4(e)(4) (stating the same); *Saavedra-Sandoval*, 126 Nev. at 596-97, 245 P.3d at 1201. Thus, during the underlying proceeding, Splond could have sought an extension of time to serve process based on the arguments he now makes on appeal concerning the circumstances that allegedly prevented him from timely effecting service and his subsequent service of the summons and complaint on certain respondents. But Splond failed to preserve these issues for appellate review because he never presented any arguments before the district court, as he did not file any motion practice during the underlying proceeding and did not appear at the June 2024 show-cause hearing.[4] *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623

[4]Nevertheless, to the extent Splond contends that he was unable to obtain leave to proceed in forma pauperis until after the expiration of the 120-day service period and that this somehow resulted in the district court

P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). Thus, Splond has failed to establish a basis for relief in this respect.

Splond also asserts that the district court failed to provide him notice of the June 2024 show-cause hearing and that he was therefore denied notice and an opportunity to be heard with respect to whether his complaint should have been dismissed based on his failure to timely serve respondents. While Splond did not present that argument before the district court, we may nevertheless consider it since it implicates his right to procedural due process. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (providing that "procedural due process requires notice and an opportunity to be heard"); *see also Desert Chrysler-Plymouth v. Chrysler Corp.*, 95 Nev. 640, 643-44, 600 P.2d 1189, 1191 (1979) (explaining that this court generally declines to hear issues not raised below but that constitutional issues may be considered for the first time on appeal). However, the district court's order to show cause was accompanied by a certificate of mailing from the district court's judicial executive assistant, who certified that, on the day the order was filed, she mailed a copy to Splond at the address listed on his complaint via first class mail. *See* NRS 47.250(13) (establishing a disputable presumption "[t]hat a letter duly

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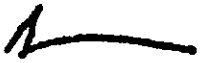
clerk not issuing the summons until February 2024, his argument is belied by the record. Indeed, the record demonstrates that the district court granted Splond leave to proceed in forma pauperis in late June 2023—approximately two months into the 120-day service period—and that Splond did not submit a summons to the district court clerk for issuance under signature and seal until February 2024, approximately six months after the period for serving process had expired.

directed and mailed was received in the regular course of the mail"); *cf.* EDCR 2.60(a) (requiring the district court to "prepare, serve and file a notice or order setting the case for trial"); NRCP 5(b)(2)(C) (providing that service of a document is complete upon the mailing of a copy of the document to the appropriate party's last known address). And although Splond could have filed a post-judgment motion to challenge the district court's dismissal order below, *see, e.g.*, NRCP 60 (authoring a party to move for post-judgment relief on various grounds), he did not do so, and the record is therefore devoid of any evidence to show that he did not receive the show-cause order or that it was sent to the incorrect address. Consequently, Splond has failed to establish that he was not provided with notice of the June 2024 show-cause hearing in violation of his due process rights.

Given the foregoing, we conclude that Splond has not demonstrated that the district court abused its discretion by dismissing his complaint for failure to effect timely service of process. *See Moroney*, 138 Nev. at 770, 520 P.3d at 361. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge
Charles Edward Splond
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk