

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HECTOR CARRILLO,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION;
LYNDA PARVEN, NOW KRISTINE
NELSON, IN HER CAPACITY AS
ADMINISTRATOR OF THE
EMPLOYMENT SECURITY DIVISION;
AND J. THOMAS SUSICH, IN HIS
CAPACITY AS THE CHAIR OF THE
NEVADA EMPLOYMENT SECURITY
DIVISION BOARD OF REVIEW,
Respondents.

No. 88979-COA

FILED

AUG 12 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Melissa Fuller*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Hector Carrillo appeals from a district court order dismissing a petition for judicial review in a pandemic unemployment assistance matter. Eighth Judicial District Court, Clark County; Anna C. Albertson, Judge.

Carrillo was initially found eligible for and received pandemic unemployment assistance (PUA) benefits, but after he was later determined to be ineligible, respondent Employment Security Division (ESD) sought to recoup the benefits that it had paid to him. Carrillo appealed ESD's determination and an appeals referee dismissed his appeal based on his failure to appear at the hearing before it. The ESD Board of Review (Board) declined to review the referee's decision as it did not find Carrillo's reason for his nonappearance and failure to contact the referee compelling in nature. Carrillo filed a timely petition for judicial review on November 3,

2023. However, Carrillo failed to timely serve the petition on respondents, as required by NRS 612.530(2).¹

Carrillo eventually served respondents on February 14, 2024, and respondents thereafter moved to dismiss the petition based on Carrillo's failure to timely serve the ESD Administrator. Carrillo opposed the motion to dismiss, acknowledging service was untimely, but nevertheless arguing the service deadline was not jurisdictional in the absence of legislative intent making it jurisdictional, and that good cause existed to extend the deadline. Respondents filed a reply, arguing that, even if the service timeline was not jurisdictional, it was nevertheless mandatory.

The district court ultimately granted respondents' motion to dismiss based on the failure to timely effectuate service, finding that NRS 612.530 had been amended in 2020 and explicitly excluded any good cause language from the statute, rendering the 45-day service deadline mandatory. This appeal followed.

On appeal, Carrillo challenges the district court's order dismissing his petition for judicial review based on his failure to timely serve respondents, arguing the 45-day service deadline is not jurisdictional and, therefore, the district court should be able to extend the deadline for good cause.

We review an order granting a motion to dismiss for failure to effect timely service of process for an abuse of discretion. *Abreu v. Gilmer*, 115 Nev. 308, 312-13, 985 P.2d 746, 749 (1999). Our consideration of

¹A.B. 12 amended NRS 612.530 effective June 10, 2025. 2025 Nev. Stat., ch. 457, § 1, at _____. In this order, we refer to the prior version of the statute in effect during the underlying proceedings.

whether the district court's dismissal of Carrillo's petition for judicial review was proper begins by examining NRS 612.530, which sets forth the procedure for seeking judicial review of a Board of Review decision in a PUA matter. This court reviews issues of statutory construction de novo but will review a district court's factual findings for an abuse of discretion. *See, e.g., Spar Bus. Servs., Inc. v. Olson*, 135 Nev. 296, 298, 448 P.3d 539, 541 (2019) (reviewing statutory construction de novo but reviewing a good cause determination for an abuse of discretion).

NRS 612.530 provides that a petitioner may secure judicial review of an adverse Board of Review decision by commencing an action in the district court, and that the petition for judicial review "must" be served on the Administrator within 45 days after the commencement of the action. NRS 612.530(1), (2). The supreme court has held that strict compliance with statutory provisions is a precondition to judicial review. *Kame v. Emp. Sec. Dep't*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989), *overruled in part on other grounds by Jorrin v. Emp. Sec. Div.*, 139 Nev. 260, 260, 534 P.3d 978, 979 (2023).

In this case, it is undisputed that Carrillo failed to serve the Administrator within the 45-day service period, as required by NRS 612.530(2). A review of the plain language of NRS 612.530(2)'s requirement that the petition "must, within 45 days after the commencement of the action, be served," reflects that the legislature did not provide any discretion to extend the service deadline. Our supreme court recently considered this issue in several unpublished orders and, after examining the statute, likewise concluded that the service deadline in NRS 612.530(2) is mandatory and cannot be extended. *See Nokley v. Emp. Sec. Div.*, No. 85045, 2023 WL 3441031, at *1 (Nev. May 12, 2023) (Order of Affirmance)

(concluding NRS 612.530(2)'s 45-day service period is "mandatory and must be strictly enforced"); *Levine v. Emp. Sec. Div.*, No. 87013, 2024 WL 4658720, at *1-2 (Nev. Oct. 31, 2024) (Order of Affirmance) (affirming the dismissal of a petition for judicial review based on a failure to timely effectuate service and noting that the language of the statute suggests there is no discretion to extend the service period).

Notably, in *Nokley*, No. 85045, 2023 WL 3441031, at *1, the supreme court explained that it had previously determined, in *Spar Business Services, Inc.*, 135 Nev. at 298, 448 P.3d at 541, that the district court could extend the time for service upon a showing of good cause under a prior version of NRS 612.530(2). However, shortly thereafter, the legislature amended that statute to provide that the petition "must, within 45 days after the commencement of the action, be served." *Nokley*, No. 85045, 2023 WL 3441031, at *1 (quoting 2020 Nev. Stat., ch. 7, § 11, at 87). The supreme court concluded that, since the new statutory language—amended following *Spar*—did not suggest any discretion to extend the service period, the 45-day service deadline was mandatory. *Id.* Based on the foregoing analysis, we conclude that dismissal of Carrillo's petition for judicial review was mandated. *See Kame*, 105 Nev. at 25, 769 P.2d at 68.

In reaching this conclusion, we reject Carrillo's argument that, absent language in the statute indicating the service rule is jurisdictional, the rule should be treated as procedural and, as such, should allow for the district court to extend the service timeline for good cause. Carrillo relies on *Wilkins v. United States*, 598 U.S. 152, 157 (2023), which indicated that courts should not construe procedural rules as jurisdictional absent legislative intent for that construction, to support his argument. He argues our supreme court recognized *Wilkins* in *Nokley* but did not address the


issue of whether the service timeline is jurisdictional due to the *Nokley* appellant's failure to cogently argue that issue. We are unpersuaded by Carillo's *Wilkins*-based argument. In *Nokley*, the supreme court declined to consider a *Wilkins* argument both because the appellant failed to set forth a cogent argument *and* because compliance with the statutory service period is mandatory. No. 85045, 2023 WL 3441031, at *1 & n. 1. Following *Nokley*, our supreme court has continued to construe NRS 612.530's service period as mandatory based on the plain language of the statute. *See Levine*, No. 87013, 2024 WL 4658720, at *1-2 (explaining that the statute provides a petition "must" be served within 45 days after the commencement of the action, that "must" generally imposes a mandatory requirement, and that the language of the statute suggests there is no discretion to extend the service period).

Moreover, our conclusion finds support in the recent amendment to NRS 612.530, which now provides that, if the petition is not served within 45 days of the commencement of the action, "the court is deprived of jurisdiction over the action and shall dismiss the action upon the motion of the Administrator." *See* NRS 612.530(3) (effective June 10, 2025). While we acknowledge the amended version of the statute was not in effect during the underlying proceedings, *see* 2025 Nev. Stat., ch. 457, § 2, at ___ (providing the amendatory provisions apply to petitions for judicial review filed on or after the effective date of the act), the new language clarifying that the service rule is jurisdictional is persuasive in revealing the legislative intent of the previous version; namely, that the applicable version of NRS 612.530 does not allow the district court discretion to extend the service deadline. *See In re Estate of Thomas*, 116 Nev. 492, 495, 998 P.2d 560, 562 (2000) ("Where a former statute is amended, or a doubtful

interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of what the Legislature intended by the first statute." (internal quotation marks omitted)).

Based on the foregoing analysis, we conclude that the district court properly dismissed Carrillo's petition for judicial review. Accordingly, we affirm that decision.

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Anna C. Albertson, Judge
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