

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARIE REDEKER,

Appellant,

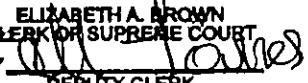
vs.

NEVADA DEPARTMENT OF
CORRECTIONS; DIRECTOR
DZURENDA; WARDEN GARRETT;
ASSOCIATE WARDEN LEGRAND; CCS
III SOUTHWORTH; CASEWORKER
HORN; AND SLP SCRIBE COSTA,
Respondents.

No. 89453-COA

FILED

AUG 27 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Arie Redeker appeals from a district court order dismissing his complaint for lack of service. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Redeker filed a complaint that alleged he was currently under the custody of the Nevada Department of Corrections (NDOC) and was housed at Lovelock Correctional Center (LCC). Redeker claimed that while at LCC he participated in the Structured Living Program (SLP), which was a boot camp-style program that required intense physical activity and focused on personal discipline. The complaint alleged that Redeker exacerbated a prior injury while participating in the program and, rather than create a reasonable accommodation that would allow him to continue, respondents removed him from the program. Redeker argued that respondents violated the Americans with Disabilities Act. Redeker sought only injunctive relief, including returning him to the SLP at a specific level and requiring that respondents create a reasonable accommodation that would allow him to complete the SLP. Redeker further filed affidavits of

service that stated respondents were served either at LCC or at the NDOC's Carson City office.

The Office of the Nevada Attorney General (OAG) filed a motion to dismiss which argued that, because the complaint named state employees (respondents Dzurenda, Garrett, LeGrand, Southworth, and Horn (collectively NDOC respondents)), Redeker was required to serve both the employees and the OAG pursuant to NRCP 4.2(d)(2). Redeker opposed the motion, arguing that respondent Keith Costa¹ was an inmate volunteer, and thus, he did not have to serve the OAG. While Redeker acknowledged that the other respondents were state employees, he nevertheless argued that he named them not as employees but as volunteers and did not have to serve the OAG as a result. Redeker urged the district court to conclude that the NDOC respondents were serving in a "dual role" of volunteer and state employee because while they used their status as NDOC employees to supervise the inmates in the SLP, this supervision was outside of their normal job responsibilities, which turned them into volunteers. Redeker further argued that assuming he was required to serve the OAG, the court should extend the service deadline.

Respondents filed a reply which acknowledged that Costa was not a state employee. Further, respondents asserted that Redeker was misrepresenting how the SLP operated within the NDOC and again argued they were state employees. Finally, respondents argued that Redeker failed to file a motion requesting an extension of time to complete service, and thus, the complaint should be dismissed. The district court then entered a written order dismissing the complaint, finding that Redeker was required

¹Redeker's complaint identified the SLP Scribe Costa while the affidavit of service stated his name was Keith Costa.

to serve the OAG and had failed to do so but did not address whether the deadline to complete service should be extended. Redeker now appeals.

We review an order granting a motion to dismiss for failure to effectuate timely service of process for an abuse of discretion. *Abreu v. Gilmer*, 115 Nev. 308, 312-13, 985 P.2d 746, 749 (1999). A plaintiff who names any current or former employee of the state as a defendant “for an act or omission relating to his or her public duties or employment” must serve the complaint on both the employee and the Nevada Attorney General at the Office of the Attorney General in Carson City. NRCP 4.2(d)(2).

Redeker first argues the district court abused its discretion by failing to recognize he named the NDOC respondents as volunteers, not employees, and thus was not required to serve the OAG. We reject this argument as applied to the NDOC respondents and conclude the district court correctly determined that Redeker was required to complete NRCP 4.2(d)(2)’s dual service requirement. Accepting Redeker’s argument that he named the NDOC respondents as volunteers and not as state employees would require the court to ignore the allegations in the complaint. For example, the complaint identifies each respondent, save Costa, by their NDOC position and further alleges the various NDOC respondents are “responsible for” ensuring the NDOC complies with federal law, ensuring proper administration of programs for inmates, ensuring inmate complaints are properly responded to, or otherwise have authority over the NDOC employees and inmates. Thus, the allegations demonstrate the NDOC respondents are being sued “for an act or omission relating to his or her public duties or employment” and Redeker was therefore required to serve the OAG in addition to the NDOC respondents. *See* NRCP 4.2(d)(2).

However, we conclude the district court erred to the extent it dismissed the complaint against Costa for failing to complete the dual service requirement because respondents’ reply brief before the district

court acknowledged he was not a state employee. According to the plain language of NRCP 4.2(d)(2), when a plaintiff names a current or former state employee for acts or omissions arising from their employment, the plaintiff must complete the dual service requirement by serving the individual and the OAG. Because Costa is not a current or former state employee, the district court abused its discretion by imposing NRCP 4.2(d)(2)'s dual service requirement as to Costa.

Despite correctly concluding that NRCP 4.2(d)(2)'s dual service requirement applied to the NDOC respondents, the district court nevertheless abused its discretion by failing to extend the deadline to complete service pursuant to NRCP 4.2(d)(6)'s cure period.² A court "must allow a party a reasonable time to cure its failure to serve the Attorney General under Rule 4.2(d)(1) or (2), if the party has served the [state employee]." NRCP 4.2(d)(6)(B). The supreme court recently held a party is not required to file a motion for an extension of time to take advantage of NRCP 4.2(d)(6)(B)'s cure period. *Harris v. State*, 138 Nev. 403, 411, 510 P.3d 802, 810 (2022). In *Harris*, the supreme court held

NRCP 4.2(d)(6) *requires* the district court to allow a plaintiff a reasonable time to cure defects in service, even after the generally applicable 120-day service period under NRCP 4.2(e) expires, if the party has timely fulfilled at least one of the two service requirements under NRCP 4.2(d)(2) for service on public officers and employees sued over acts or omissions relating to their duties or employment, regardless of whether the plaintiff has filed a motion for an extension of time.

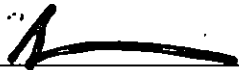
²Although this court generally will not grant a pro se appellant relief without first providing respondents an opportunity to file an answering brief, *see* NRAP 46A(c) (stating the same), in light of the basis for our reversal, the filing of an answering brief would not aid this court's resolution of these issues, and thus, no such brief has been ordered.


Id. at 412-13, 510 P.3d at 811 (emphasis added).

Here, the record demonstrates Redeker served the NDOC respondents personally and that the NDOC respondents moved to dismiss solely because he failed to serve the OAG. Thus, like in *Harris*, the district court was required to grant Redeker a reasonable extension of time to complete service without requiring the filing of a motion and regardless of whether the original service deadline expired. And it therefore abused its discretion in dismissing the complaint as to the NDOC respondents for failure to serve the OAG.

Accordingly, we conclude the district court abused its discretion by dismissing the complaint against Costa and thus we reverse that decision and remand for further proceedings. We further reverse the portion of the district court order dismissing the NDOC respondents and remand for the district court to provide additional reasonable time for Redeker to complete the dual service requirement for those respondents.

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Jim C. Shirley, District Judge
Arie Robert Redeker
Attorney General/Carson City
Attorney General/Las Vegas
Clerk of the Court/Court Administrator