

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELEESA CARR,
Appellant,
vs.
UNIVERSITY OF NEVADA, LAS
VEGAS CAMPUS POLICE
DEPARTMENT; PAUL HARRIS; LUIS
FERREIRA; JOSEPH DEMONTE; AND
OFFICER BLUNDELL,
Respondents.

No. 38441

FILED

APR 19 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellant's civil action for failure to timely serve process on the defendants. Deleesa Carr filed a proper person complaint on June 12, 2000; however, she did not serve the complaint and summons on the defendants. The plaintiff in a civil action is responsible for service of process,¹ and if service is not accomplished within 120 days after the complaint is filed, the action must be dismissed without prejudice as to all unserved defendants unless the plaintiff can show good cause why service was not made within that period.²

Ms. Carr tried several times to calendar the action for a court hearing, and in spring 2001, after she requested that a hearing be scheduled for June 4, Ms. Carr apparently discussed the hearing date with a calendar clerk in the clerk's office and with the assigned judge's secretary. These court personnel informed Ms. Carr that the June 4

¹NRCP 4(a).

²NRCP 4(i); Scrimmer v. Dist. Ct., 116 Nev. 507, 998 P.2d 1190 (2000).

hearing date would be removed from the calendar because she had not served a copy of the complaint and summons on the defendants, and she must do so before any hearings could be held. The judge's secretary also advised Ms. Carr formally by letter that before a hearing could be set, a copy of the complaint and summons must be served on the defendants and an affidavit of service filed with the court.

Ms. Carr subsequently obtained two summonses from the court clerk, and hired a process server to serve process on the University of Nevada, Las Vegas (UNLV) and the UNLV Campus Police Department. These two defendants were served on May 29, 2001, 351 days after the complaint was filed, but the other named defendants were apparently never served.

UNLV and the UNLV Campus Police Department immediately moved to dismiss for failure to timely serve the complaint. Ms. Carr retained counsel, who filed an opposition on her behalf. Counsel argued that Ms. Carr should be excused from the requirement that she timely serve the summons and complaint because she did not have counsel, she did not know she was supposed to serve the defendants and thought the court would notify them, the case should be resolved on the merits, and the defendants probably knew the complaint had been filed and were not prejudiced by the delay in service. The district court granted the motion to dismiss, and Ms. Carr timely appealed.

Because it appeared that the appeal lacked merit, we ordered Ms. Carr to show cause why the district court's order should not be summarily affirmed. Having considered Ms. Carr's response to our order,³

³We grant Ms. Carr's motion to supplement her response, and direct the clerk of this court to file the affidavit received on April 16, 2002.

and her opening brief, we conclude that the district court did not abuse its discretion by dismissing the complaint.

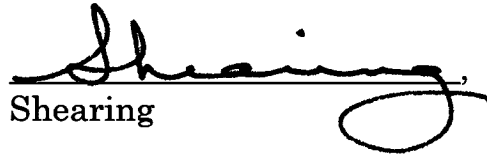
The district court considered the factors we set forth in Scrimmer v. District Court⁴ to guide its good cause analysis, and concluded that Ms. Carr had offered no reasonable explanation for her failure to serve the defendants within the allotted time. We agree. Ms. Carr's status as a proper person litigant does not excuse her from complying with the rules of civil procedure; a proper person litigant shares the same basic duty as parties with counsel to comply with the rules. NRCP 4(i)'s time requirement is clear, and the rule provided Ms. Carr with ample notice that failure to timely serve process could result in the dismissal of her complaint.

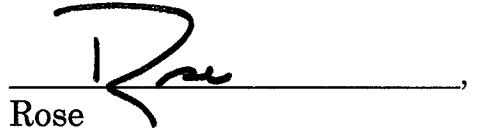
The information Ms. Carr received from court personnel, that the defendants must be served before a hearing could be set, also did not excuse her failure to timely serve process. The 120-day period had expired long before she discussed the matter with the court clerk and the judicial secretary, and the information they imparted is not analogous to a court order deeming a case commenced upon the filing of a motion and effectively tolling the time within which a complaint must be filed.⁵ Accordingly, we affirm the district court's order dismissing Ms. Carr's complaint.

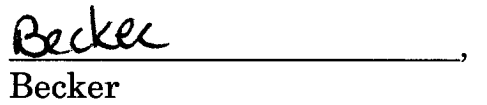
⁴116 Nev. 507, 998 P.2d 1190.

⁵Carlile v. South Routt Sch. Dist. RE 3-J, 652 F.2d 981 (10th Cir. 1981), is factually distinguishable and does not support Ms. Carr's argument that her reliance on the judge's secretary's instructions that she must serve the defendants and provide proof of service before a hearing would be set excuses her failure to serve process within 120 days.

It is so ORDERED.


Shearing, J.


Rose, J.


Becker, J.

cc: Hon. Jeffrey D. Sobel, District Judge
Grenville T. Pridham
Walter L. Ayers
Clark County Clerk