

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAXINE SILVERBERG,
Appellant,
vs.
FRANK DEWITT BATES AND AYAKO
LONEY,
Respondents.

No. 38473

FILED

FEB 04 2003

ORDER OF AFFIRMANCE

JUDITH E. LUK,
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is an appeal from a district court order dismissing a tort action. The parties were involved in a car accident. As a result of the accident, appellant Maxine Silverberg filed a complaint against respondents Frank Bates and Ayako Loney for personal injuries. Loney eventually entered into a settlement agreement. Subsequently, Bates died.

Bates' counsel filed a suggestion of death upon the record and served it by certified mail on Silverberg. After more than ninety days passed, Bates' counsel filed a motion to dismiss pursuant to NRCP 25(a)(1). Subsequently, Silverberg filed a motion to amend the complaint, alleging excusable neglect pursuant to NRCP 6(b) among other issues. The district court granted the motion to dismiss and found that there was no excusable neglect to permit relief of the mandatory ninety-day period specified in NRCP 25(a)(1).

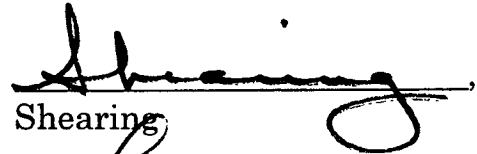
Silverberg first argues that the suggestion of death was improper and failed to trigger the ninety-day period pursuant to NRCP 25(a)(1). She contends the term "personal representative" is a legal term of art requiring a court appointment. She argues the ninety-day period was not triggered because Bates failed to serve the personal representative with the suggestion of death.

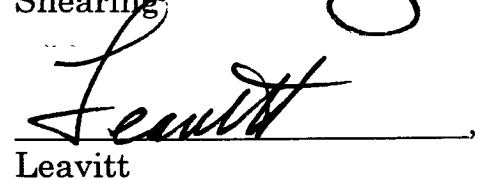
“Questions of law are reviewed de novo.”¹ We conclude that NRCPC 25(a)(1) does not require a personal representative to be court appointed and does not require the suggestion of death to be served on a personal representative.


Next, Silverberg argues that the district court erred in not finding excusable neglect pursuant to NRCPC 6(b).

“Findings of fact of the district court will not be set aside unless clearly erroneous.”² We conclude that substantial evidence supports the district court’s finding. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Gene T. Porter, District Judge
Goodman Chesnoff & Keach
Murdock & Associates, Chtd.
Laxalt & Nomura, Ltd./Reno
Clark County Clerk

¹SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

²Hermann Trust v. Varco-Pruden Buildings, 106 Nev. 564, 566, 796 P.2d 590, 591-92 (1990).