



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES THEODORE SHARKEY,
INDIVIDUALLY,
Appellant,
vs.
REAL ESTATE DIVISION,
DEPARTMENT OF BUSINESS AND
INDUSTRY, STATE OF NEVADA;
NEVADA REAL ESTATE
COMMISSION; AND SHARATH
CHANDRA, IN HER CAPACITY AS
ADMINISTRATOR,
Respondents.

No. 90863-COA

ORDER OF AFFIRMANCE

James Theodore Sharkey appeals from a district court order dismissing his petition for judicial review in an agency matter. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Respondent the Nevada Real Estate Division (Division) initiated an investigation into Sharkey, whose real estate salesperson and broker's licenses were inactive, after receiving various complaints that he was engaging in activities that were reserved for licensed real estate professionals. Following a hearing, respondent the Nevada Real Estate Commission (Commission), found him in violation of various provisions of NRS Chapter 645 and ordered that he pay an administrative fine. The Commission also revoked his real estate licenses.

Sharkey filed a timely petition for judicial review in the district court and effectuated service on the Division, but he did not serve the Office of the Attorney General. As such, respondents filed a motion to dismiss Sharkey's petition for judicial review, arguing the district court lacked subject matter jurisdiction based on Sharkey's failure to serve the Office of the Attorney General in Carson City within 45 days of filing the petition, as required by NRS 233B.130(2)(c)(1), (5). Respondents contended that Sharkey failed to request an extension of the service deadline and had failed to demonstrate good cause existed for an extension. Sharkey opposed the motion, predominantly arguing that he substantially complied with the service requirements. He also filed a supplemental opposition to the motion to dismiss that did not present a service argument or request an extension of the deadline for good cause.

Following a hearing on the motion to dismiss, the district court granted respondents' motion and dismissed Sharkey's petition based on his failure to serve the Office of the Attorney General as required by NRS 233B.130(2)(c)(1). This appeal followed.

On appeal, Sharkey challenges the dismissal of his petition for judicial review based on the service requirement. We review a decision to dismiss a petition for judicial review for lack of subject matter jurisdiction *de novo*. *Whitfield v. Nev. State Pers. Comm'n*, 137 Nev. 345, 349, 492 P.3d 571, 575 (2021). NRS 233B.130(2)(c)(1) provides that a petition for judicial review of an administrative decision must be served upon the "Attorney General, or a person designated by the Attorney General, at the Office of the Attorney General in Carson City." NRS 233B.130(5) provides that a

petition for judicial review must be served “within 45 days after the filing of the petition, unless, upon a showing of good cause, the district court extends the time for such service.”

NRS 233B.130(2)(c)(1)’s service requirement is mandatory and jurisdictional. *Heat & Frost Insulators & Allied Workers Loc. 16 v. Lab. Comm’r*, 134 Nev. 1, 4, 408 P.3d 156, 159 (2018). “Thus, failure to strictly comply with NRS 233B.130(2)(c)(1) requires dismissal absent a demonstration of good cause.” *Id.*

Here, Sharkey acknowledged he failed to serve the Attorney General at the Office of the Attorney General in Carson City, so dismissal was mandated absent a good cause finding. However, he failed to request an extension of the service deadline until the hearing on respondents’ motion, over a month after filing his opposition. And, while Sharkey cited a case containing good cause considerations in his opposition to respondents’ motion to dismiss, his actual contention was that he substantially complied with NRS 233B.130(2)(c)(1)’s service requirement. But it is well established that strict compliance, not substantial compliance, is required to satisfy NRS 233B.130(2)(c)(1). *See id.* (explaining “failure to strictly comply with NRS 233B.130(2)(c)(1) requires dismissal”). Moreover, Sharkey’s failure to request an extension or argue that good cause existed to grant one is further highlighted by the fact that the district court admonished him at an earlier proceeding that he needed to read NRS Chapter 233 and ensure he was complying with the statutory requirements. He thereafter filed a supplement to his opposition to the motion to dismiss but made no mention of service or an extension of the service deadline.

Given Sharkey's failure to strictly comply with the service requirement combined with the court's prior admonishment to make sure he was complying with the statutory requirements, and his failure to make an extension request or cogent good cause argument prior to the hearing on the motion to dismiss, we conclude the district court properly dismissed his petition. *See Whitfield*, 137 Nev. at 349, 492 P.3d at 575.

In reaching this conclusion, we are unpersuaded by Sharkey's arguments that the district court punished him for his indigency and that he could not afford to serve the petition at the Office of the Attorney General. Although it appears Sharkey hired a process server to serve the Division, personal service is not required in judicial review proceedings, and our supreme court has held that such a petition can be mailed in accordance with NRCP 5. *See Dept. of Corrs. v. DeRosa*, 136 Nev. 339, 342, 466 P.3d 1253, 1255 (2020) (holding that petitions for judicial review are construed as post-complaint pleadings and therefore personal service is unnecessary and alternate service methods, such as by mail, under NRCP 5(b) are sufficient). Further, our supreme court has implied that service by mailing is not unduly burdensome on a litigant who has a pending in forma pauperis application, nor does it unconstitutionally restrict access to the courts in the unemployment context where extending the service deadline is not permitted. *See Nokley v. Emp. Sec. Div.*, No. 85045, 2023 WL 3441031, at *2 (Nev. May 12, 2023) (Order of Affirmance) (explaining that the holding in *DeRosa* "makes [appellant's] equal protection argument a non-starter—if as an in forma pauperis petitioner, [appellant] can serve by mail, the unfairness in not tolling the time for service specified in NRS 612.530(2)

while an in forma pauperis petition is pending diminishes almost to the vanishing point”).


We are similarly unpersuaded by Sharkey’s argument that his due process rights were violated by the denial of his last-minute good cause argument. “Due process is satisfied where interested parties are given an opportunity to be heard at a meaningful time and in a meaningful manner.” *Mesi v. Mesi*, 136 Nev. 748, 750, 478 P.3d 366, 369 (2020). This generally takes the form of a live hearing, but in some cases the parties may be “afforded sufficient opportunity to present their case through affidavits and supporting documents.” *J.D. Constr., Inc. v. IBEX Int’l Grp., LLC*, 126 Nev. 366, 378, 240 P.3d 1033, 1041 (2010).

Here, Sharkey had the opportunity to make a good cause argument and request an extension in his opposition to the motion to dismiss, his supplemental opposition, or any time after the court specifically admonished him to read NRS Chapter 233 and comply with its requirements. As previously explained, although respondents argued in their motion to dismiss that Sharkey failed to seek an extension to complete NRS 233B.130(2)(c)(1)’s service requirements or make a good cause argument, he still failed to cogently request such an extension in his opposition and made a substantial compliance argument instead. Sharkey also failed entirely to mention an extension in his supplemental opposition. Sharkey finally requested an extension but not until the hearing on the motion to dismiss, and the court was not required to grant his request. *Cf. Spar Bus. Servs., Inc. v. Olson*, 135 Nev. 296, 297, 448 P.3d 539, 541 (2019) (stating a district court has the discretion to extend NRS 233B.130(5)’s time

to complete service “upon a showing of good cause”). Because he was given multiple meaningful opportunities to request an extension, Sharkey cannot demonstrate that his due process rights were violated. See *Mesi*, 136 Nev. at 750, 478 P.3d at 369. Accordingly, we

ORDER the judgment of the district court AFFIRMED. ¹


Bulla, C.J.


Gibbons, J.


Westbrook, J.

cc: Hon. Monica Trujillo, District Judge
James Theodore Sharkey
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

¹Insofar as Sharkey raises other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.