

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWIN SLADE,  
Appellant,  
vs.  
CHICAGO TRUST COMPANY,  
Respondent.

No. 39589

FILED  
OCT 15 2002

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ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
DEPUTY CLERK

This is a proper person appeal from an order granting respondent's motion to dismiss appellant's breach of contract action.

On February 21, 2002, respondent filed a motion to dismiss appellant's amended complaint, and a notice of the motion setting the matter for a hearing on March 18, 2002. Respondent then filed a certificate of mailing, stating that the motion and notice of motion had been mailed to appellant at a certain address on February 22, 2002. Appellant did not file an opposition. The district court minutes indicate that at the March 18, 2002 hearing, appellant was not present and the district court noted that the motion had been mailed to appellant at an address other than that listed on his amended complaint. Thus, the district court directed respondent to mail the motion to the address listed on appellant's amended complaint, and continued the matter for two weeks until April 1, 2002, at 9:00 a.m.

On March 18, 2002, respondent mailed the motion to dismiss and notice of the April 1, 2002 hearing to appellant at the address listed on his amended complaint. At the 9:00 a.m. hearing on April 1, 2002, appellant did not appear. The district court orally granted respondent's motion to dismiss, noting that a certificate of mailing had been filed. Notably, appellant filed an opposition to the motion to dismiss on April 1,

2002. The district court entered a written order granting respondent's motion to dismiss on April 18, 2002. This appeal followed.

EDCR 2.20(b) requires that an opposition to a motion be filed within ten days after service of the motion. Here, once respondent mailed its motion to appellant's correct address on March 18, 2002, the opposition was due on April 1, 2002.<sup>1</sup> Appellant's opposition was therefore timely, but the district judge likely did not have the opposition before him at the 9:00 a.m. hearing on the same day.

Additionally, EDCR 2.20(a) provides that all motions must contain a notice setting the motion for a hearing not less than twenty-one days from the date the motion is served and filed. Respondent's original notice set the matter for a hearing on March 18, 2002, and complied with the twenty-one-day time period, but that notice, along with the motion to dismiss, was served on appellant at an incorrect address. On March 18, 2002, respondent served appellant at the correct address, with a notice setting the hearing for April 1, 2002. The April 1, 2002 hearing was less than twenty-one days from the date the motion was served, and therefore did not comply with EDCR 2.20(a).<sup>2</sup>

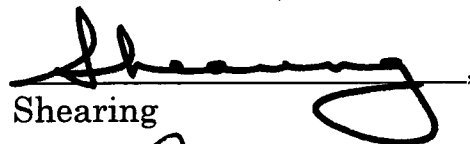
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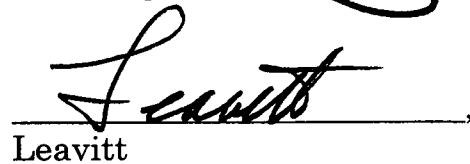
<sup>1</sup>See EDCR 1.14(a) (stating that when the last day of a computed period falls on a Saturday, Sunday, or non-judicial day, the period runs until the next judicial day); EDCR 1.14(c) (adding three days to a prescribed time period when service is accomplished by mail).

<sup>2</sup>We note that while EDCR 2.26 allows the district court to shorten the time for the hearing of a motion, the district court did not expressly shorten the time for the hearing. Moreover, the abbreviated hearing date did not afford appellant the requisite time to file an opposition before the hearing.

Based on these concerns regarding the abbreviated hearing date and the district court's apparent non-consideration of appellant's timely opposition to the motion to dismiss before the hearing, we directed respondent to show cause why the district court's order should not be reversed and this matter remanded for further proceedings. Respondent has filed a response stating that it is unable to show cause. Accordingly, we reverse the district court's order, and remand this matter to the district court for further proceedings consistent with this order.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Gene T. Porter, District Judge  
Michael A. Reason  
Edwin Slade  
Clark County Clerk