

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON MCKINLEY WARD,  
Appellant,  
vs.  
DAVID A. MELIGAN, WARDEN,  
ESTATE OF AND/OR SUCCESSOR;  
AND DONALD HELLING, WARDEN,  
Respondents.

No. 42226

**FILED**

**NOV 09 2006**

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

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order dismissing appellant's complaint for failure to serve the summons and complaint within 120 days under NRCP 4(i). First Judicial District Court, Carson City; William A. Maddox, Judge.

In his complaint, filed on March 4, 2002, appellant Jason McKinley Ward, an inmate, sued the warden of the state prison and alleged, among other things, that the warden had failed to forward appellant's personal property during an interstate prison transfer. In his complaint, appellant named defendants as "David Meligan, warden, estate of and/or successor." Although David Meligan was the warden at the time of appellant's prison transfer, Meligan died by the time appellant's complaint was filed. Don Helling replaced Meligan as the new warden.

On May 13, 2002, appellant sent a letter to the sheriff's office asking it to serve Meligan or Helling. Helling refused to accept service, perceiving the defendant designation "estate of" as a lawsuit against David Meligan personally. The complaint was eventually accepted for service on March 4, 2003, more than a year after the complaint was filed. On October 6, 2003, the district court granted Helling's motion to dismiss the case for failure to serve within 120 days under NRCP 4(i).

On appeal, appellant argues that respondent improperly refused to accept service and that the district court erred when it dismissed appellant's complaint for failure to timely serve.

In his response, Helling argues that he correctly refused service because appellant improperly designated the defendant as "David Meligan, warden, estate of and/or successor." Helling argues that "estate of" implies that Meligan was sued in his personal capacity and that Helling was not authorized to accept service on the estate's behalf. Helling also attempts to distinguish NRCP 25(d), allowing for automatic substitution of government officers, from NRCP 25(a)(1), which allows substitution of a non-government party only if the party dies after the action is filed. Helling argues that since Meligan died before appellant's complaint was filed, and appellant is suing Meligan as a private party, appellant cannot substitute Helling in his place under NRCP 25(d).

Respondent's original complaint named defendants as "David Meligan, warden, estate of and/or successor." The first part clearly identifies Meligan as a warden, his official capacity, and the second part "estate of" may be interpreted to identify Meligan personally. Even if Helling correctly treated the identification "estate of" as personal, it was unreasonable for Helling not to accept service on behalf of the "warden," in his official capacity.

Moreover, NRCP 25(d)(2) states that a public officer may be listed by his or her title:


A public officer who sues or is sued in an official capacity may be described as a party by the


officer's official title rather than by name; but the court may require the officer's name to be added.<sup>1</sup>

Accordingly, NRCP 25(d)(2) allows a plaintiff to designate a public officer by the officer's "official title," and the court has discretion to require the officer's name to be added. Therefore, appellant's identification of the defendant as "warden" was sufficient for the purposes of service, and Helling unreasonably refused service.

Accordingly, we reverse the district court's order and remand this case for further proceedings consistent with this order.<sup>2</sup>

It is so ORDERED.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. William A. Maddox, District Judge  
Jason McKinley Ward  
Attorney General George Chanos/Carson City  
Carson City Clerk

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<sup>1</sup>Although NRCP 25 has been amended since 2002, the amendments were technical and do not affect the outcome of this appeal.

<sup>2</sup>We deny appellant's motion to strike respondents' response.

<sup>3</sup>We have considered Helling's other arguments and conclude that they lack merit.