

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCELENE TAYLOR,  
Appellant,  
vs.  
WASHOE MEDICAL CENTER, A  
NEVADA NON-PROFIT  
CORPORATION,  
Respondent.

No. 42390

**FILED**

JUL 11 2005

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

ORDER OF AFFIRMANCE

This is an 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). Second Judicial District Court, Washoe County; Stephen P. Elliott, Judge.

FACTS AND PROCEDURAL HISTORY

Appellant Marcelene Taylor filed a complaint against Washoe Medical Center (WMC) with the Northern Nevada Medical Screening Panel on July 26, 2001. Taylor's complaint alleged that WMC committed medical malpractice when her mother died while in WMC's care. The panel released its findings on February 27, 2003.<sup>1</sup>

After the panel had completed its investigation, Taylor's attorney withdrew from representation. Prior to withdrawal, the attorney prepared a complaint for filing in the district court. Taylor, in proper person, filed the complaint on April 7, 2003. However, Taylor did not serve the summons and a copy of the complaint upon WMC until August

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<sup>1</sup>The panel's findings were not included in the parties' Joint Appendix in this appeal.

26, 2003, more than 20 days after the NRCP 4(i) time limit for service of process had expired.

On September 15, 2003, WMC filed a motion to dismiss the complaint because of untimely service. Taylor, having retained new counsel, opposed the motion. The district court granted WMC's motion after finding that Taylor failed to show good cause for why she did not serve WMC within 120 days of filing her complaint. Taylor filed the instant appeal, contending that the district court erred in granting WMC's motion.

### DISCUSSION

NRCP 4(i) provides that service of the summons and complaint must be made within 120 days after filing the complaint or the action will be dismissed without prejudice unless the serving party can show good cause why service was not made within 120 days. The "determination of good cause" is within the district court's discretion.<sup>2</sup> This court will not reverse an order granting a motion to dismiss for failure to timely serve unless the district court abused its discretion.<sup>3</sup>

The following considerations may govern a district court's analysis of good cause under NRCP 4(i), with no single consideration controlling:<sup>4</sup>

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<sup>2</sup>See Scrimmer v. Dist. Ct., 116 Nev. 507, 513, 998 P.2d 1190, 1193-94 (2000).

<sup>3</sup>Abreu v. Gilmer, 115 Nev. 308, 312-13, 985 P.2d 746, 749 (1999).

<sup>4</sup>Scrimmer, 116 Nev. at 516, 998 P.2d at 1195.

(1) difficulties in locating the defendant, (2) the defendant's efforts at evading service or concealment of improper service until after the 120-day period has lapsed, (3) the plaintiff's diligence in attempting to serve the defendant, (4) difficulties encountered by counsel, (5) the running of the applicable statute of limitations, (6) the parties' good faith attempts to settle the litigation during the 120-day period, (7) the lapse of time between the end of the 120-day period and the actual service of process on the defendant, (8) the prejudice to the defendant caused by plaintiff's delay in serving process, (9) the defendant's knowledge of the existence of the lawsuit, and (10) any extensions of time for service granted by the district court.<sup>5</sup>

This court has further noted that a plaintiff approaching the deadline for serving the summons and complaint may seek an extension under NRCP 6(b).<sup>6</sup> Additionally, if the 120-day period has already expired, a plaintiff may obtain an extension under NRCP 6(b)(2) upon showing "excusable neglect."<sup>7</sup>

Taylor argues that she failed to timely serve WMC because she had difficulty retaining new counsel and as a pro per plaintiff, she did not understand the rules of civil procedure. Although certain factors appear to favor Taylor, we cannot say that the district court abused its discretion in finding she had not shown good cause.

Taylor did not show that she had any difficulty locating WMC or that WMC attempted to evade service. Moreover, before withdrawing

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<sup>5</sup>Id. at 516, 998 P.2d at 1196.


<sup>6</sup>Id. at 516 n.6, 998 P.2d at 1196 n.6.

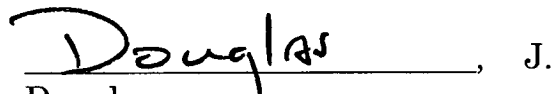
<sup>7</sup>Id.

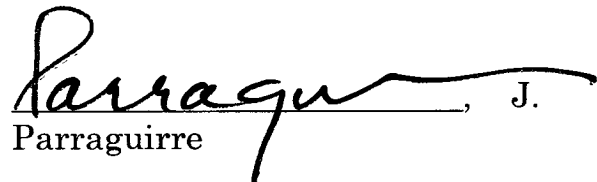
from representation, Taylor's former counsel explicitly advised her of the importance of filing the complaint and serving WMC. Nevertheless, Taylor waited more than four months after filing her complaint, and 20 days after the time limit had expired, to effect service of process. Finally, Taylor failed to avail herself of NRCP 6(b)(2) and request that the district court extend the period for service based upon excusable neglect once she realized the 120-day time limit had expired.

We conclude that the district court did not abuse its discretion in finding that Taylor failed to show good cause. Accordingly, we affirm the district court's order dismissing the action.

It is so ORDERED.

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

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Steven P. Elliott, District Judge  
Karp & Co., Ltd.  
Piscevich & Fenner  
Washoe District Court Clerk