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### Summary of Saavedra-Sandoval v. Wal-Mart Stores, Inc., 126 Nev. Adv. Op. No. 55

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*Nevada Law Journal*

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### **Summary**

A plaintiff in a tort action appealed from a district court order denying her motion to enlarge time for service of process.

### **Disposition/Outcome**

The district court's judgment was upheld. Nevada Rule of Civil Procedure 4(i) requires, first, that good cause exists for the filing delay, and second, that good cause exists to enlarge the time for service.

### **Factual and Procedural History**

On June 6, 2007, Saavedra-Sandoval filed suit against Wal-Mart for injuries sustained when she allegedly slipped and fell in a Las Vegas Wal-Mart in 2005. Eight days after filing suit, she served process on the co-manager of the Wal-Mart where the incident allegedly took place. However, by statute complaints must be served upon a registered agent,<sup>2</sup> which in this case was The Corporation Trust Company of Nevada.

Over one year later, on October 7, 2008, Saavedra-Sandoval served Wal-Mart with a three-day notice of intent to take default. Again, the service was improper, as Saavedra-Sandoval served Wal-Mart's claims investigators. The claims investigators forwarded Saavedra-Sandoval's notice to Wal-Mart, who immediately answered the complaint on October 9, 2008. Within the month, Wal-Mart moved to amend its answer to include a defense of insufficient service of process. Saavedra-Sandoval failed to oppose the motion, which the district court subsequently granted.

On February 12, 2009, after Wal-Mart amended the answer, Saavedra-Sandoval filed a motion to enlarge the time for service of process pursuant to Nevada Rule of Civil Procedure 4(i). Over a year had passed since the 120-day limit to serve the summons and complaint, and Saavedra-Sandoval argued good cause existed because her process server personally served the Wal-Mart co-manager and sent a notice of intent to take default, which Wal-Mart answered. She did not, however, explain her initial failure to properly serve Wal-Mart's registered agent. The district court found Saavedra-Sandoval had failed to show good cause. It therefore denied her motion to enlarge time and granted Wal-Mart's motion to dismiss.

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<sup>1</sup> By Kammi Rencher

<sup>2</sup> NEV. REV. STAT. 14.020(1) (2007).

The Nevada Supreme Court issued this opinion to resolve the application of the “good cause” analysis articulated in *Scrimmer v. District Court*<sup>3</sup> in light of the 2004 amendment to Nevada Rule of Civil Procedure 4(i).

## **Discussion**

Writing for a unanimous court, Justice Hardesty outlined the effect of the 2004 amendment to Nevada Rule of Civil Procedure 4(i). Prior to 2004, Rule 4(i) required service within the 120-day time limit, unless a party could show good cause for its failure. The 2004 amendment to Rule 4(i) added the requirement that a party must also file its motion seeking enlargement of time to serve process within the 120-day limit. The Court, looking to the language of the rule and the drafter’s notes, found that the rule was clearly meant to encourage parties to be prompt, and that under the revised rule courts may not enlarge the time to serve process unless the litigant both moves to enlarge the service period and shows good cause.

In 2000, the *Scrimmer* court enumerated factors by which courts could evaluate good cause to enlarge time for service of process.<sup>4</sup> However, here the Court held that a district court must first determine whether good cause exists for the party’s failure to timely file its motion seeking to enlarge time. Only after good cause for filing an untimely motion is shown should a court then apply the *Scrimmer* factors to determine whether good cause exists to allow the time enlargement. However, the Court noted that several of the *Scrimmer* factors may help the preliminary analysis of whether good cause exists for the failure to file a motion to enlarge time. Namely, the second (whether defendant attempted to evade or conceal service), third (whether plaintiff was diligent), and ninth (whether defendant was aware of the lawsuit) factors may be helpful, as they relate to the possible difficulties regarding service of process.<sup>5</sup>

The Court found that in the present case, Saavedra-Sandoval had failed to address the first step of the analysis, and had not presented any evidence justifying an extension of time. Specifically, she did not contend that she suffered any hardship in locating the correct party upon whom to serve summons, nor that Wal-Mart had attempted to evade service. Furthermore, she did not use due diligence; her process server stated, incorrectly, that the statute-designated agent was the co-manager upon whom process was served. The Court also noted Saavedra-Sandoval failed to oppose Wal-Mart’s request to add insufficient service of process as a defense, choosing instead to wait for the amended answer before filing a motion to enlarge time. This further demonstrates good cause is lacking in this case.

Finally, the Court noted that even if Saavedra-Sandoval had shown good cause to enlarge time, neither she nor the district court had considered the threshold issue of her failure to file a motion to enlarge time within the 120-day time limit, and hence her request would still fail. The

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<sup>3</sup> 116 Nev. 507, 998 P.2d 1190 (2000)

<sup>4</sup> 116 Nev. at 516, 998 P.2d at 1190-96.

<sup>5</sup> Citing *id.*

Court briefly noted that the district court had reached the correct result for the wrong reasons. However, where the district court ultimately reached the right conclusion, the higher court may, and in this case did, affirm.<sup>6</sup>

### **Conclusion**

Nevada Rule of Civil Procedure 4(i) requires a court to first consider whether good cause exists for an untimely motion to enlarge time, then engage in a Scrimmer analysis to consider whether good cause exists to grant a motion to enlarge time for service. Here, no good cause existed for the untimely motion, and the district court's decision is upheld.

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<sup>6</sup> *Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987).