

## Scholarly Commons @ UNLV Boyd Law

---

Nevada Supreme Court Summaries

Law Journals

---

3-2022

### **Cervantes-Guevara v. District Court (Anderson), 138 Nev. Adv. Op 10 (Mar. 3, 2022)**

Jaden Braunagel

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

---

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [youngwoo.ban@unlv.edu](mailto:youngwoo.ban@unlv.edu).

APPLYING GOVERNOR ISSUED EMERGENCY DIRECTIVES TO THE NEVADA RULES  
OF CIVIL PROCEDURE

SUMMARY

The Court determined whether a district court was within its discretion to deny an untimely second motion to enlarge time for service of process. The Court concluded that Emergency Directive 009 did not apply to court rules, and therefore the deadline for service under NRCP 4(e) was not altered by the emergency directive. Because the petitioner's motion was therefore untimely, and they did not demonstrate good cause for the delay in filing the motion under NRCP 4(e)(3). The Court denied the original petition for a writ of mandamus because the district court did not abuse its discretion.

FACTS AND PROCEDURAL HISTORY

The petitioner, Cervantes-Guevara, and third party, Anderson, were in a motor vehicle accident in Las Vegas. Later on, January 7, 2020 the petitioner filed a complaint against Anderson and their employer alleging various tort claims. But under NRCP 4(e)(1), which requires that parties be served within 120 days of the complaint being filed unless a court grants an extension, the deadline to serve was May 6, 2020.<sup>2</sup> The petitioner attempted to effectuate personal service to Anderson multiple times but was unable to do so by the deadline. Shortly after, Governor Sisolak declared a state of emergency due to the COVID-19 pandemic and issued Emergency Directive 009.<sup>3</sup> Section 2 of the directive mandated that any time limit set by a state statute or regulation for the initiation of any legal action is tolled from April 1, 2020, until thirty days after the end of the state of emergency.<sup>4</sup>

The petitioner filed their first ex parte application to enlarge the time for service, seeking an additional ninety days to serve Anderson via publication. The district court granted the motion on June 5, 2020, which extended the service period to September 3, 2020. Cervantes-Guevara failed to publish the first of the four requires services until October 15, 2020. Again, on October 28, 2020, the petitioner filed her second motion to enlarge time for service. The motion was denied finding that the directive did not toll the time for service of process and that the motion was untimely under a district court order, which required motions to extend service deadlines filed after July 1, 2020, to be filed prior to the expiration of the time to serve.<sup>5</sup> Anderson was then dismissed as a party to the action.

Cervantes-Guevara filed a motion for reconsideration, but the motion was denied finding that the relevant factors required to deny the motion to enlarge time for service were considered, even if not on the record. The petitioner then filed the writ of mandamus asking the Court to direct the district court to vacate its order denying the enlargement of time and dismissing Anderson from the action.

---

<sup>1</sup> Jaden Braunagel

<sup>2</sup> NEV. R. CIV. P. 4(e)(1).

<sup>3</sup> Emergency Directive 009 (Revised) (Apr. 1, 2020).

<sup>4</sup> *Id.* at § 2.

<sup>5</sup> Eighth Judicial District Court Administrative Order 20-17, at \*15–16.

## DISCUSSION

### *Whether this court should entertain this writ petition*

The Court found that it was appropriate to review Cervantes-Guevara's petition because they did not have an adequate solution to challenge the district court's order dismissing Anderson from the action, because it is not appealable. Further, considering whether the Governor's Emergency Directive applies to the court rules is an important issue of law that requires clarification and resolution by the Court to promote the judicial economy.<sup>6</sup>

### *Whether the Governor's Emergency Directive applies to service of process*

The Court under the Nevada Constitution can declare and review the law. The review of statutory construction is de novo review using the plain language of the statute.<sup>7</sup> While the Nevada Supreme Court has not addressed whether executive orders and directive apply to the principles of statutory interpretation, other courts have.<sup>8</sup>

While Cervantes-Guevara argues that NRCP 4 is a regulation, Nevada law defines a "regulation" as "[a]n agency rule...", and an "agency" is defined by Nevada law as "an agency, bureau, board, commission, department, division, officer or employee of the Executive Department."<sup>9</sup> Therefore the Court finds that court rules are not included and the Emergency Directive does not apply to deadlines established by the court's rules.<sup>10</sup> Cervantes-Guevara's attempt to argue the NRCP are regulations under the Emergency Directive fails.

The petitioner also argues that NRCP 4(e) expands the meaning of a legal action because it sets forth a timeline for when the legal proceeding begins for a defendant in a civil proceeding. But, this attempt to expand the meaning of "commencing a civil action" to now include service of process fails because this is not commonly a part of the phrase.

### *Whether the district court manifestly abused its discretion by denying Cervantes-Guevara's second motion to enlarge time for service as untimely under NRCP 4(e)*

Dismissal for failure to effect timely service of process is reviewed for discretion, but writ relief will not be issued unless a court manifestly abused its discretion.<sup>11</sup> The Court agreed with the district court that the petitioner's second motion to enlarge time was untimely. Also, the petitioner did not have good cause under NRCP 4(e)(3) for filing their second motion late because their interpretation of the Emergency Directive is unreasonable. The record shows that Cervantes-Guevara's attempts were not diligent. Therefore, the district court was within its discretion when it denied Cervantes-Guevara's second motion.

---

<sup>6</sup> See *Mona v. Eighth Judicial Dist. Court*, 132 Nev. 719, 724 (2016).

<sup>7</sup> *Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014); *Smith v. Zilverberg*, 137 Nev., Adv. Op. 7, 481 P.3d 1222, 1230 (2021).

<sup>8</sup> See *In re Murack*, 957 N.W.2d 124, 128 (Minn. Ct. App. 2021); see also *Bassidji v. Goe*, 413 F.3d 928, 934 (9th Cir. 2005); *United States v. Abu Marzook*, 412 F. Supp. 2d 913, 922 (N.D. Ill. 2006); *City of Morgan Hill v. Bay Area Air Quality Mgmt. Dist.*, 13 Cal Rptr. 3d 420, 431 (Ct. App. 2004).

<sup>9</sup> Nev. Rev. Stat. § 223B.038(1)(a); Nev. Rev. Stat. § 233B.031.

<sup>10</sup> *Byrd v. Byrd*, No. 81198, 2020 WL 4746547 (Nev. Aug. 14, 2020).

<sup>11</sup> *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010); *NuVeda, LLC v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 54, 495 P.3d 500, 503 (2021).

## CONCLUSION

Emergency Directive 009 does not apply to the deadlines established by court rules because the court rules are neither statutes nor regulations per Nevada law. The Emergency Directive did not toll the 120-day service period established by NRCP 4(e). The district court did not manifestly abuse its discretion by denying Cervantes-Guevara's second motion to enlarge time and dismissing the complaint regarding Anderson. The Court denied the original petition for a writ of mandamus.