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Sabater v. Razmy [State of Nevada], 139 Nev. Adv. Op. 50 (Nov. 22, 2023)¹

SUPREME COURT AFFIRMS DISMISSAL FOR FAILURE TO TIMELY EFFECT SERVICE OF PROCESS.

Summary

When a Motion for an Extension of Time to Serve the Summons and Complaint is filed after the 120-day deadline to serve, it must demonstrate good cause to explain why the motion is untimely. NRCP 12(b) does not impose a time limit on when a party can file a Motion to Dismiss for Insufficient Service of Process. It is timely so long as it is filed before a responsive pleading is filed.

Background

Appellants Sabater and Desimone filed a negligence claim against Respondent Razmy as the result of a 2019 car accident. They filed August 26, 2021 and needed to serve Razmy by December 24, 2021. The district court issued an order to show cause February 23, 2022, after the 120-day deadline for service had passed. Sabater and Desimone eventually served Razmy on March 15, 81 days after the deadline. Razmy moved to quash the service on April 15. Appellants had until April 29 to file their opposition, but they did not file until May 20. By this date, Respondent had already filed a notice of nonopposition.

Appellants filed their opposition and a request to extend the 120-day period for service. They did not effectuate service because of clerical errors and turnover at their law firm. They contended that Razmy's motion to quash was untimely because it was filed after the 21-day deadline for an answer pursuant to NRCP 12.² Razmy noted that Appellant's counsel had no email address listed with the State Bar of Nevada, so his attorney searched and sent notice to another lawyer at the law firm.

Discussion

The district court did not abuse its discretion in denying the motion for an extension of time to serve the summons and complaint or in granting Razmy's motion to dismiss.

The Court found the district court did not abuse its discretion.³ On appeal, Appellants argued that the district court abused its discretion when it denied their motion to extend time to serve the summons and complaint. The Appellants filed the motion for an extension after the 120-day deadline for service passed.⁴ Accordingly, the motion must demonstrate good cause for the late request. Various factors determine if there is good cause.⁵ Sabater and Desimone addressed why they had good cause for the extension, but not why they had good cause for requesting the extension after the deadline. This waived any argument about the issue on appeal.⁶ This meant that The Court did not need to address the *Scrimmer* factors to evaluate whether there

¹ By Megan Cunnington.

² NRCP 12.

³ *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 595, 245 P.3d 1.198, 1200 (2010); NRCP 4(e)(4).

⁴ *Id.* 126 Nev. at 597, 245 P.3d at 1201. NRCP 4(e)(4).

⁵ *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 516–17, 998 P.2d 1190, 1195–96 (2000).

⁶ *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52; 623 P.2d 981, 983 (1981).

was good cause. The timeliness of the motion rendered it moot.⁷ Therefore, the district court did not abuse its discretion when it denied the retroactive request for an extension of time to serve.

The district court properly dismissed for failure to timely serve process.

The Court reviewed the district court's ruling pursuant to NRCP 12(b)(4) *de novo* for an abuse of discretion.⁸ Based upon the plain language of NRCP 12, it was certainly risky for Razmy to file the motion beyond the 21 days provided to answer a complaint. While the Plaintiff can obtain a default, it will not necessarily be granted.⁹ The motion was timely, so the district court did not err in its decision to dismiss the suit. The denial of the extension of time to serve was also proper. There was no error in the dismissal under NRCP 4(e)(2).

Conclusion

The ruling of the district court dismissing the complaint is affirmed. A plaintiff must demonstrate good cause when they ask for an extension of time to serve the summons and complaint. Parties can file a motion to dismiss for insufficient service of process any time before the responsive pleading is filed.

⁷ *Scirmer*, 116 Nev. at 516–17, 998 P.2d at 1195–96.

⁸ *Abreu v. Gilmer*, 115 Nev. 308, 312–13, 985 P.2d 746, 749 (1999); *Marquis & Aurbach v. Eighth Judicial Dist. Court*, 122 Nev. 1147, 1156, 146 P.3d 1130, 1136 (2006).

⁹ *Opaco Lumber & Realty Co. v. Phipps*, 75 Nev. 312, 314, 340 P.2d 95, 96 (1959), *superseded by statute on other grounds* as stated in *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. 540, 548, 331 P.3d 850, 855 (2014); *see also* *Scheinwald v. Bartlett*, 51 Nev. 155, 157-58, 271 P. 468, 468-69 (1928).