

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARMANDO FIGUEROA AND SUSAN
FIGUEROA,
Appellants,

vs.

SOUTHWEST RANCH HOMEOWNERS
ASSOCIATION, A NEVADA
NONPROFIT CORPORATION,
Respondent.

No. 49415

ARMANDO FIGUEROA AND SUSAN
FIGUEROA,
Appellants,

vs.

SOUTHWEST RANCH HOMEOWNERS
ASSOCIATION, A NEVADA
NONPROFIT CORPORATION,
Respondent.

No. 49577

FILED

SEP 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE IN DOCKET NO. 49415 AND
VACATING DISTRICT COURT ORDER IN DOCKET NO. 49577

These are consolidated appeals from district court orders (1) granting an NRCP 4(i) motion to dismiss for failure to timely serve the complaint (Docket No. 49415) and (2) granting rehearing and affirming the prior order granting the motion to dismiss (Docket No. 49577). Eighth Judicial District Court, Clark County; Elizabeth Halverson, Judge.

On September 27, 2006, appellants Armando and Susan Figueroa filed a complaint against respondent Southwest Ranch Homeowners Association ("HOA"), seeking de novo review of a non-binding arbitration decision concerning the construction of a wall on their property. On January 23, 2007, after an associate attorney handling their

case left the law firm representing them, the Figueroas' lead counsel sought a stipulation from opposing counsel to extend the time for service of their complaint. By a facsimile sent on January 25, 2007, at approximately 12:56 p.m., the Figueroas' attorney was notified that the extension request was denied although the HOA's counsel indicated he would accept service. The Figueroas have not indicated that they ever filed a motion to extend the time for service, and instead, it appears that they simply served the summons and complaint on the HOA's counsel on January 26, 2007.

On February 12, 2007, the HOA filed a motion to dismiss the complaint for untimely service under NRCP 4(i). Although the Figueroas opposed the motion, after a hearing, the district court granted the motion to dismiss. The Figueroas appealed that order on May 4, 2007, in Docket No. 49415. On April 12, 2007, the Figueroas filed a motion for reconsideration, which was opposed by the HOA. Following an April 19, 2007, hearing, the district court entered a May 10, 2007, order granting the motion for reconsideration but affirming its previous order granting the HOA's motion to dismiss. The Figueroas appealed the May 10 order in Docket No. 49577.

As a preliminary matter, we note that the order challenged in Docket No. 49577 is void, as the district court lacked jurisdiction to consider the motion for reconsideration and enter the May 10 order. Once appellants filed the notice of appeal in Docket No. 49415 challenging the order granting respondent's motion to dismiss, the district court was

divested of jurisdiction in the underlying case.¹ We therefore direct the district court to vacate the May 10, 2007, order granting rehearing and affirming its prior order.

With respect to Docket No. 49415, NRCP 4(i) provides that when a summons and complaint is not timely served within 120 days of the filing of the complaint,

the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion, unless the party on whose behalf such service was required files a motion to enlarge the time for service and shows good cause why such service was not made within that period.

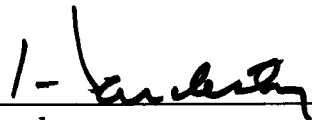
Here, although the Figueroas ultimately served the complaint one day after Rule 4(i)'s 120-day period had expired, they have not indicated that they ever filed a motion seeking permission to serve the complaint beyond that period as required by the rule.² Because Rule 4(i) requires both the filing of a motion to enlarge the time for service and a showing that good

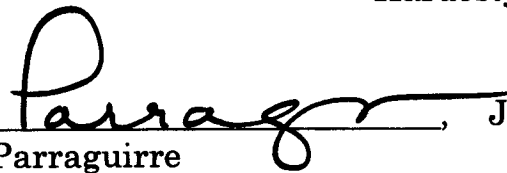
¹See Smith v. Emery, 109 Nev. 737, 740, 856 P.2d 1386, 1388 (1993) (citing Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380, (1987)); but see Bongiovi v. Bongiovi, 94 Nev. 321, 579 P.2d 1246 (1978) (holding that a district court has continuing jurisdiction only over matters that are collateral to and that do not affect the merits of a pending appeal).

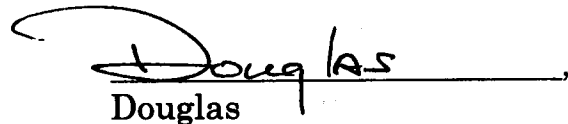
²Although the Figueroas had already served the complaint after the NRCP 4(i) period had expired, they could have filed a motion asking the district court to enlarge the service time and approve their untimely service or allowing them to reserve the complaint during an extended period set by the district court.

cause exists for not serving the complaint within the 120-day period,³ the Figueros' apparent failure to file a motion to enlarge the time for service required the district court to dismiss the case under the mandatory language of the rule.⁴ Having apparently failed to satisfy the first of Rule 4(i)'s requirements by filing a motion to enlarge the time for service, there was no need to determine whether good cause for the delay existed and the factors listed in Scrimmer v. District Court are inapplicable to this case.⁵ We therefore conclude that the district court did not err in dismissing the Figueros' complaint. Accordingly, we

ORDER the judgment challenged in Docket No. 49415 AFFIRMED and VACATE the May 10, 2007, order challenged in Docket No. 49577.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

³Our review of the record reveals that the Figueros never filed a motion seeking to extend the Rule 4(i) period and they make no arguments regarding any requests for an extension of time directed to the district court. See Browning v. State, 120 Nev. 347, 361, 91 P.3d 39, 50 (2004) (recognizing that a "claim warrants no consideration" when appellant fails to provide this court with "any cogent argument, legal analysis, or supporting factual allegations").

⁴State, Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 9-10, 866 P.2d 297, 302 (1994) (construing "shall" as mandatory and "may" as permissive).

⁵116 Nev. 507, 998 P.2d 1190 (2000).

cc: Eighth Judicial District Court Dept. 23
Hon. David B. Barker, District Judge
William F. Buchanan, Settlement Judge
Bell and Young, Ltd.
Hampton & Hampton
Eighth District Court Clerk