


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SOURCE ONE EVENTS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
BARBARA TENINTY,
Real Party in Interest.

No. 68850

FILED

DEC 17 2015

TRACIE K. LINDALMAN
CLERK OF DISTRICT COURT
BY: 
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging a district court order granting a motion for an extension of time to serve process and denying a motion to dismiss a torts action. At the direction of this court, real party in interest filed an answer to the petition.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court generally will not consider writ petitions challenging district court orders denying motions to dismiss, unless no factual dispute exists and the district court was obligated to dismiss the action pursuant to clear authority or if an important issue of law needs clarification. *Int'l Game Tech.*, 124 Nev. at 197-98, 179 P.3d at 558-59.

NRCP 4(i) requires the district court to dismiss an action as to any defendant upon whom service of the summons and complaint is not made within 120 days after the filing of the complaint, unless the party who was required to serve process “shows good cause why such service was not made within that period.” *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 596, 245 P.3d 1198, 1201 (2010) (noting that the district court does not have discretion to enlarge the service period in the absence of a showing of good cause). Moreover, a party filing a motion to enlarge the time to serve process after the service period has elapsed must also demonstrate good cause for failing to file a timely motion for an enlargement of time. *See id.* at 597, 245 P.3d at 1201 (“[O]nly upon a showing of good cause to file an untimely motion to enlarge time for service should the district court then apply [the good-cause factors set forth in *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 998 P.2d 1190 (2000)] for the delay in service.”).

Here, real party in interest had until April 28, 2015, to serve the summons and complaint on petitioner.¹ *See* NRCP 4(i). While real party in interest asserts that there was some confusion over who represented petitioner and whether service would be accepted on petitioner’s behalf by a particular attorney, the record demonstrates that,


¹Although real party in interest does not directly dispute petitioner’s assertion that service was due on April 28, she states in her answer to the writ petition that service was effectuated on petitioner one month after the deadline for service on June 26, 2015. As real party in interest’s complaint naming petitioner was filed on December 29, 2014, petitioner’s assertion that the deadline was April 28, 2015, is correct. *See* NRCP 4(i) (requiring the summons and complaint to be served within 120 days after the complaint is filed).

when the service deadline passed, real party in interest knew that service had not been effectuated. Despite this knowledge, petitioner waited until May 27, 2015, to file her motion to enlarge the service period. And nothing in her motion demonstrated that petitioner had good cause for failing to file the motion for an enlargement within the service period.

In the absence of such a showing, the district court should not have even considered whether petitioner had demonstrated good cause for failing to timely serve process, *see id.*, and instead, was required to dismiss the complaint for failure to timely serve process. *See* NRCP 4(i). As the district court was required to dismiss the complaint as to petitioner in this case, we grant the petition for a writ of mandamus and direct the clerk of the court to issue a writ of mandamus instructing the district court to vacate the portion of its order granting real party in interest's motion to enlarge the time to serve process on petitioner and enter an order dismissing petitioner from the underlying action.

It is so ORDERED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²In light of this order, we deny as moot petitioner's December 11, 2015, motion for stay of the district court proceedings.

cc: Hon. Jerry A. Wiese, District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Morris Anderson
Eighth District Court Clerk