

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN ELVIN TURNER,
Appellant,
vs.
SALVATION ARMY; AND THE STATE
OF NEVADA,
Respondents.

No. 73439

FILED

MAR 22 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

John Elvin Turner appeals from a district court order dismissing a tort action.¹ Eighth Judicial District Court, Clark County; Mark B. Bailus, Judge.

Turner filed a complaint against respondents the Salvation Army and the State of Nevada in August 2016. Turner filed a notice of service for the Salvation Army in March 2017, more than 120 days after filing the complaint. Then, in April 2017, Turner moved for an enlargement of time to serve all parties, including the Salvation Army. In response, the Salvation Army moved to dismiss the action for failure to properly serve within 120 days and opposed the motion for enlargement of time. The district court dismissed Turner's complaint against the Salvation Army for failure to timely serve and against the State of Nevada for failure to assert

¹The clerk of the court is directed to amend the caption for this matter to conform to the caption on this order.

any facts or claims against it.²

We review district court orders granting a motion to dismiss for failure to timely serve under NRCP 4(i) under an abuse of discretion standard. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010). The district court must dismiss a complaint that is not served within 120 days of filing unless the plaintiff files a motion to enlarge the time to serve within the service period and shows good cause why service was not completed. *See* NRCP 4(i). “Only upon a showing of good cause for delay in filing the motion to enlarge time” should the district court conduct any further analysis of plaintiff’s motion. *Saavedra-Sandoval*, 126 Nev. at 597, 245 P.3d at 1201.

Here, Turner’s only service-related argument is that he had unnamed difficulties in completing this task. He further offers no explanation as to how these alleged difficulties prevented him from filing a timely motion to extend the service period. Absent any such explanation, Turner has failed to demonstrate that good cause existed for his failure to timely move to extend the service period. *See id.*; *see also Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that points not supported by cogent argument need not be considered on appeal). And while Turner asserts that he never received


²Turner did not challenge the dismissal of the State of Nevada in his appellate briefing. As such, he has waived any argument regarding this decision, and we therefore affirm the district court’s dismissal of the State of Nevada. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (“Issues not raised in appellant’s opening brief are deemed waived.”).

notice that his complaint against the Salvation Army might be dismissed on service grounds,³ that argument is belied by the record, which shows that the motion to dismiss was properly served on Turner pursuant to NRCP 5. Under these circumstances, we conclude that the district court did not abuse its discretion in dismissing appellant's case as to the Salvation Army for failure to timely effectuate service of process. *See Saavedra-Sandoval*, 126 Nev. at 595, 245 P.3d at 1200.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Mark B. Bailus, District Judge
John Elvin Turner
Cooper Levenson, P.A.
Eighth District Court Clerk

³Although styled as a "motion for relief," Turner's October 9, 2017, filing actually presents additional arguments in support of his appeal. We have considered the arguments contained therein and thus, no separate action is necessary as to this document.