

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN ELVIN TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72606

FILED

MAR 22 2018

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

ORDER OF REVERSAL AND REMAND

John Elvin Turner appeals from a district court order dismissing a civil rights complaint. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Turner filed a complaint against respondent the State of Nevada in July 2015 while incarcerated. Turner was released shortly thereafter, but eventually returned to incarcerated status. Following extensive motion practice where Turner sought a file-stamped copy of his complaint to effectuate service and other relief, in March 2017, the district court sua sponte dismissed Turner's case pursuant to NRCP 4(i) for failure to serve defendant within 120 days of filing. This appeal followed.¹

NRCP 4(i) provides that "[i]f a service of the summons and complaint is not made upon a defendant within 120 days after 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*" unless

¹Although 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 as part of his appeal and thus, no separate action is necessary as to this document.


the party required to effectuate service files a motion to enlarge the time for service and shows good cause for the failure to timely serve. (Emphasis added). As detailed in the rule, a district court can sua sponte dismiss a case for failure to effect proper service in line with NRCP 4(i), but the court must provide the plaintiff with notice that it intends to dismiss the matter. The record here lacks any notice to Turner that the court intended to dismiss this matter on service grounds prior to the entry of the order of dismissal. We therefore conclude that the dismissal of Turner's case under these circumstance was an abuse of discretion. *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010). Accordingly, we reverse the district court's dismissal of Turner's case on NRCP 4(i) service grounds and remand this matter to the district court for further proceedings.


On appeal, Turner further asserts that he never received a copy of the file-stamped complaint as required to effectuate service. See generally NRCP 4. And our review of the record reveals nothing to suggest Turner was ever provided with a copy of the complaint even though he repeatedly requested a file-stamped copy of this document. See NRS 12.015(2)(a)(2) (requiring the clerk of the court to issue any necessary pleading or paper without charge to a litigant proceeding in forma pauperis); see also NRCP 4(a) (providing that, "[u]pon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it to the plaintiff."). Indeed, Turner's continued efforts to obtain this document were rejected by the district court. Because we reverse and remand this matter based on the district court's failure to provide the required notice, on remand the district court should consider the impact of Turner's apparent

inability to obtain the documents necessary for service in assessing whether his action should be dismissed pursuant to NRCP 4(i).

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Ronald J. Israel, District Judge
John Elvin Turner
Eighth District Court Clerk