

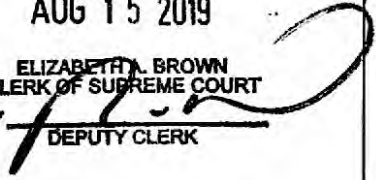
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN EDWARD WATKINS,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS;
JAMES DZURENDA, DIRECTOR OF
NDOC; VENUS B. FAJATA, CHIEF
INMATE BANKING; JAMES M.
WRIGHT, DIRECTOR; ROBIN HAGER,
ASO 111 (FISCAL SERVICES); EGAN
WALKER; AND WASHOE COUNTY
COMMISSIONERS, INCLUSIVE,
Respondents.

No. 75797

FILED

AUG 15 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jonathan Edward Watkins appeals from a district court order dismissing a civil rights action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Watkins filed his complaint in August of 2017. In January of 2018, the district court issued an order noting that Watkins had failed to provide proof of service on any of the named defendants within the 120-day period set forth in NRCP 4(i).¹ The district court also noted that Watkins had failed to file a motion to enlarge time for service within that period, and it gave him 10 days from the entry of the order to show good cause as to why

¹NRCP 4 was amended effective March 1, 2019. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Accordingly, we cite the prior version of the rule herein.

it should not dismiss the case. Watkins filed a response with the district court in which he argued that he had provided all of the necessary documents for service to the district court clerk, who in turn informed Watkins in October of 2017 that the documents had been forwarded to the Washoe County Sheriff's Office. Watkins argued that the sheriff's office then failed to perform its duty, and he requested that the district court order the sheriff to effect service. Over a month later, the district court issued another order concluding that the record did not indicate that Watkins had provided the sheriff with all of the information necessary to complete service. The district court gave Watkins an additional 20 days to provide proof that service was completed within the requisite 120-day period, and it stated that it would dismiss the case without prejudice if he failed to do so. Then, after Watkins failed to respond within 20 days, the district court dismissed the case without prejudice. This appeal followed.

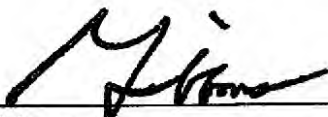
On appeal, Watkins argues that the district court should have construed his response to its January order as a motion to enlarge time for service and granted the motion. We review a district court's decision to dismiss a civil action for failure to effect timely service of process for an abuse of discretion. *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010). If a plaintiff fails to effect service upon a defendant within 120 days after filing the complaint, "the action shall be dismissed as to that defendant without prejudice upon the court's own initiative . . . , unless the [plaintiff] files a motion to enlarge the time for service and shows good cause why such service was not made within that period." NRCP 4(i). If the plaintiff fails to file such a motion before the 120-day period expires, the district court must take that into consideration when determining whether there is good cause for an extension. *Id.* The Nevada


Supreme Court has interpreted NRCP 4(i) to “creat[e] a threshold question for the district court, requiring it to first evaluate whether good cause exists for a party’s failure to file a timely motion seeking enlargement of time,” and a plaintiff’s “[f]ailure to demonstrate such good cause ends the district court’s inquiry.” *Saavedra-Sandoval*, 126 Nev. at 596-97, 245 P.3d at 1201.

Below, to the extent Watkins’ response to the district court’s January order may be construed as a motion to enlarge the time for service, he failed to address—and the district court did not consider—the reasons why he did not file such a motion within the original 120-day service period. Accordingly, the district court did not abuse its discretion when it dismissed Watkins’ complaint. *See id.* at 598, 245 P.3d at 1202 (noting that “failure to address the issue of cause for filing [a motion to enlarge time after the 120-day period] ends the district court’s inquiry”); *see also Rodriguez v. Fiesta Palms, LLC*, 134 Nev., Adv. Op. 78, 428 P.3d 255, 258-59 (2018) (noting that procedural rules cannot be applied differently to pro se litigants and that “a pro se litigant cannot use his alleged ignorance as a shield to protect him from the consequences of failing to comply with basic procedural requirements”).

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Connie J. Steinheimer, District Judge
Jonathan Edward Watkins
Attorney General/Carson City
Washoe District Court Clerk