

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN RANDALL QUINTERO,
Appellant,
vs.
THE STATE OF NEVADA; ISIDRO
BACA, WARDEN OF NEVADA
DEPARTMENT OF CORRECTIONS, OR
SUCCESSOR THEREOF PERRY
RUSSELL,
Respondents.

No. 82782-COA

FILED

DEC 09 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

John Randall Quintero appeals from an order of the district court dismissing a civil action. First Judicial District Court, Carson City; William A. Maddox, Senior Judge.

Quintero argues the district court erred by dismissing his civil action based upon his failure to complete service of process within 120 days. Quintero filed a civil action on July 30, 2020, in which he sought to enforce a settlement agreement from a previous civil action. However, Quintero did not serve his complaint on the respondents before the expiration of the 120-day time limit under NRCP 4(e), and he did not seek an enlargement of time to complete service. The respondents filed a motion to dismiss Quintero's complaint due to his failure to complete service of process within the 120-day time limit. The district court subsequently granted the respondents' motion and dismissed the complaint.

Quintero appears to assert that he did not need to serve the respondents with the complaint because they had notice of his civil action through his other, separate civil actions; his discussions with their counsel;

and his attempt to complete service of process by delivering the summons and complaint to the Northern Nevada Correctional Center. Quintero also appears to argue his failure to complete service of process within 120 days should be excused because he lacked access to legal materials and because he was not aware that he could initiate service of process before the district court granted him the right to proceed in forma pauperis. Finally, Quintero appears to contend that the district court should have extended the deadline for him to complete service of process because he is a pro se litigant or should have declined to review the motion to dismiss until after he completed service.


A district court must dismiss a plaintiff's complaint if the plaintiff fails to serve a defendant with process within 120 days of filing the complaint and fails to move for an enlargement of the time for service. *See* NRCP 4(e)(1) ("The summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule."); NRCP 4(e)(2) (providing that "[i]f service of the summons and complaint is not made upon a defendant before the 120-day service period . . . expires, the court must dismiss the action, without prejudice, as to that defendant upon motion or upon the court's own order to show cause"). Pursuant to NRCP 4.2(d)(2), a current or former state employee that is sued for acts or omissions related to the employee's employment "must be served by delivering a copy of the summons and complaint to" (1) the Attorney General or a person designated by the Attorney General to receive service of process and (2) the employee or an agent designated by the employee to receive service of process. Generally, when the validity of service of process is contested, the plaintiff has the burden of proving that service was effected in a proper manner. *See*

Aetna Business Credit, Inc. v. Universal Décor & Interior Design, Inc., 635 F.2d 434, 435 (5th Cir. 1981).

The record demonstrates Quintero did not complete service of process on the respondents within 120 days or file a motion to enlarge the time for service. Quintero did not demonstrate that the informal notice he provided to the respondents of his civil complaint through separate civil actions, through discussions with the respondents' counsel, or at the correctional center was sufficient to effectuate service of process. In addition, Quintero does not demonstrate that his failure to complete service of process within 120 days should be excused based upon a lack of access to legal materials and a lack of legal knowledge, or that the district court should have sua sponte extended the service deadline because he is a pro se litigant. Therefore, we conclude that the district court did not abuse its discretion when it dismissed Quintero's complaint without prejudice pursuant to NRCP 4(e) due to his failure to serve the respondents within 120 days of filing the complaint. *See Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010) (reviewing a district court dismissal for failure to timely effect service of process for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. William A. Maddox, Senior Judge
John Randall Quintero
Attorney General/Carson City
Attorney General/Las Vegas
Carson City Clerk