

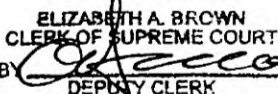
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAINE ANTON CRAWLEY,
Appellant,
vs.
CLARK COUNTY; LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT; CLARK COUNTY
SHERIFF'S OFFICE; CCDC; JOSEPH
LOMBARDO; MELODY MERALONA;
AND NAPHCARE MEDICAL
PRACTITIONER,
Respondents.

No. 84675-COA

FILED

DEC 12 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Daine Anton Crawley appeals from an order of the district court dismissing a tort and civil rights action. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

In January 2021, Crawley, who is incarcerated, filed a complaint against respondents arising from alleged injuries he suffered within the Clark County Detention Center. On March 22, 2022, the district court sua sponte dismissed Crawley's complaint without prejudice based on his non-appearance at a status hearing and his failure to serve respondents the summons and complaint pursuant to NRCP 4(e)(2). This appeal followed.

Crawley claims that the district court erred by dismissing his complaint for failing to appear at the status hearing. EDCR 7.60(a)(3) permits a court to dismiss a complaint "[i]f without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party . . . at the time set for the hearing of any matter." We review the district court's dismissal of appellant's case for failure to appear

at a hearing for an abuse of discretion. *See Moore v. Cherry*, 90 Nev. 390, 394-95, 528 P.2d 1018, 1021 (1974).

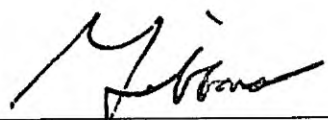
Approximately two weeks before the hearing, the district court clerk received Crawley's motion requesting his appearance at the hearing be waived or that he be allowed to appear telephonically due to his pending medical treatment. Due to circumstances beyond Crawley's control, the motion was not filed until the day after the district court dismissed Crawley's motion, and the record does not indicate that it was considered by the district court before it dismissed Crawley's case. Further, although the district court filed a document instructing the parties as to how to appear via videoconference, nothing in the record on appeal suggests that Crawley was served with that document. Under these circumstances, Crawley may have had just excuse for failing to appear at the hearing, and we must conclude that the dismissal of the case constituted an abuse of discretion.

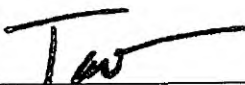
Moreover, NRC 4(e)(2) provides that "[i]f service of the summons and complaint is not made upon a defendant before the 120-day service period . . . , the court must dismiss the action, without prejudice, as to that defendant upon motion or upon the court's own order to show cause." Here, nothing in the record indicates a motion for dismissal was made or that the district court issued an order to show cause notifying Crawley that the court intended to dismiss this matter on service grounds prior to the entry of the order of dismissal. We therefore conclude the district court abused its discretion by dismissing Crawley's complaint pursuant to NRC 4(e)(2) without following the mandatory procedures set forth therein. *See*

Saavedra-Sandoval v. Wal-Mart Stores, Inc., 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010).¹

For the forgoing reasons, we reverse the district court's dismissal of Crawley's case and remand this matter to the district court for further proceedings. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Veronica Barisich, District Judge
Daine Anton Crawley
CCDC
Clark County
Clark County Sheriff's Office
Joseph Lombardo
Las Vegas Metropolitan Police Department
Melody Meralona
Naphcare Medical Practitioner
Eighth District Court Clerk

¹We take no position as to whether Crawley properly served respondents with the summons and complaint.

²Although this court generally will not grant a pro se appellant relief without first providing respondents an opportunity to file a response, the filing of a response would not aid this court's resolution of this case and, thus, has not been ordered. *See* NRAP 46A(c); *see also* NRAP 34(f)(3).