IN THE SUPREME COURT OF THE STATE OF NEVADA

ADRIANNE NOKLEY,
Appellant,
vs.
THE STATE OF NEVADA EMPLOYMENT SECURITY DIVISION; LYNDA PARVEN, ADMINISTRATOR OF THE EMPLOYMENT SECURITY DIVISION; AND J. THOMAS SUSICH, IN HIS CAPACITY AS CHAIRPERSON OF THE EMPLOYMENT SECURITY DIVISION BOARD OF REVIEW,
Respondents.

No. 85045

FILED

MAY 12 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a petition for judicial review in an unemployment assistance matter. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Appellant Adrianne Nokley sought, and was denied, pandemic unemployment assistance. She timely filed a petition for judicial review and simultaneously filed an application to proceed in forma pauperis, which, if granted, would enable Nokley to have the Carson City Sheriff's Office serve her petition free of charge. The district court granted Nokley's in forma pauperis application on January 13, 2022, and the Sheriff's Office served respondents on January 28. Respondents moved to dismiss, arguing the district court lacked jurisdiction because the petition was not timely served under NRS 612.530(2). The district court granted the motion, and this appeal followed.

Nokley contends that pandemic unemployment assistance is constitutionally protected and that by granting the in forma pauperis

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application only three days before NRS 612.530(2)'s service period expired, without tolling that service period while Nokley's in forma pauperis application was pending, the district court erroneously restricted her access to the courts. She also argues that NRS 12.015 should toll the service period while her in forma pauperis application was pending and that failing to apply NRS 12.015 here would violate her equal protection rights. We review issues of statutory construction de novo but will review a district court's factual findings for an abuse of discretion. *See, e.g.*, *Spar Bus. Servs., Inc. v. Olson*, 135 Nev. 296, 298, 448 P.3d 539, 541 (2019) (reviewing statutory construction de novo but reviewing a good cause determination for an abuse of discretion).

Nokley relies on both NRS 12.015(5) and caselaw to argue NRS 612.530(2)'s service period should be tolled. But NRS 12.015(5) only tolls the time "to appear and answer or otherwise defend the action," and not to the time for a petitioner to serve a petition. And Nokley does not address Nevada law construing either the general preconditions to bring a petition for judicial review of an administrative decision, *cf. Whitfield v. Nev. State Pers. Comm'n*, 137 Nev. 345, 345-46, 492 P.3d 571, 573 (2021); *Washoe County v. Otto*, 128 Nev. 424, 432-33, 282 P.3d 719, 725 (2012), or NRS 612.530's preconditions specifically, *cf. Bd. of Review, Nev. Dep't of Emp't, Training & Rehab. v. Second Judicial Dist. Court*, 133 Nev. 253, 255, 396 P.3d 795, 797 (2017); *Kame v. Emp't Sec. Dep't*, 105 Nev. 22, 24-25, 769 P.2d 66, 68 (1989). Nor does she address the Legislature's decision to add NRS 612.530(2)'s 45-day requirement following our decision in *Spar*, or explain why we should credit her fairness arguments in view of our decision in *State, Department of Corrections v. DeRosa*, 136 Nev. 339, 466 P.3d 1253

(2020), which clarifies a petitioner's options to effect service, including by mail.

Moreover, it is clear from the foregoing law that NRS 612.530(2) does not grant the district court discretion to toll the 45-day service period. In construing a statute, we must enforce its unambiguous requirements as written, *see Otto*, 128 Nev. at 432, 282 P.3d at 725, and we have held that strict compliance with mandatory provisions is a precondition to judicial review. *Kame*, 105 Nev. at 25, 769 P.2d at 68. In *Spar*, we addressed NRS 612.530(2)'s service requirement; because subsection (2) was then silent as to the timing of service, we turned to Nevada's general administrative procedure act, NRS Chapter 233B, specifically, NRS 233B.130(2) and NRS 233B.130(5). 135 Nev. at 298-99, 448 P.3d at 542. The former sets filing-deadline and naming requirements with no provision for excusing noncompliance; the latter sets a 45-day service deadline but permits an extension for good cause. *Id.* We interpreted NRS 233B.130(2)'s silence as indicating its requirements were mandatory and jurisdictional,[1] whereas NRS 233B.130(5)'s express grant of discretion indicated that section's requirement was not. *Id.* We applied NRS 233B.130(5)'s 45-day service period to the NRS Chapter 612 petition and concluded the district court could extend the time for service upon a showing of good cause. *Id.* at 299, 448 P.3d at 542. Soon after, the Legislature amended NRS 612.530(2) to

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[1]We recognize that recent Supreme Court law calls into question whether such requirements are truly "jurisdictional." *Wilkins v. United States*, 598 U.S. ___, 143 S. Ct. 870, 875-76 (2023) (indicating that courts should not construe procedural rules as jurisdictional absent legislative intent for that construction). But because NRS 612.530(2)'s 45-day service provision is mandatory and Nokley does not raise a cogent argument against its strict enforcement here, we need not address whether the provision is also jurisdictional.

provide that the petition "must, within 45 days after the commencement of the action, be served." 2020 Nev. Stat. 32 Spec. Sess., ch. 7, § 11, at 87. Given that this language suggests no discretion to extend the service period, and that it was added following our decision in *Spar*, we conclude the 45-day time period is mandatory and must be strictly enforced.

We decline to reach Nokley's unpreserved constitutional arguments, which proceed from a flawed premise. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.") We have previously explained that Nevada citizens do not have an inherent right to unemployment benefits and that the Legislature may enact reasonable and nondiscriminatory conditions for the procedure to obtain those benefits. *Kame*, 105 Nev. at 26, 769 P.2d at 68. And in *DeRosa* we held that a litigant in Nokley's position can effect service by mail on the agency defendant(s). 136 Nev. at 342, 466 P.3d at 1255. This holding makes Nokley's equal protection argument a non-starter—if as an in forma pauperis petitioner, Nokley can serve by mail, the unfairness in not tolling the time for service specified in NRS 612.530(2) while an in forma pauperis petition is pending diminishes almost to the vanishing point. Given Nokley's general failure to address the salient law or demonstrate unfair differentiation in her case, it would be inappropriate to reach and resolve the constitutional issues Nokley tenders. *Cf. Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("This court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment.").

Because Nokley did not serve her petition within 45 days of filing it as required by NRS 612.530(2), the district court properly granted the motion to dismiss. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Cadish

_____, J.
Pickering

_____, J.
Bell

cc: Chief Judge, Eighth Judicial District Court
Hon. Jacob A. Reynolds, District Judge
Nevada Legal Services/Las Vegas
State of Nevada/DETR
Eighth District Court Clerk