

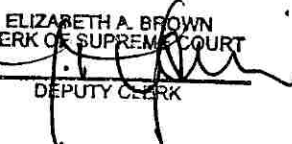
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHAD WINDHAM MITCHELL,  
Appellant,  
vs.  
THE STATE OF NEVADA; WASHOE  
COUNTY; AND CARSON CITY  
SHERIFF'S OFFICE,  
Respondents.

No. 86526-COA

FILED

JAN 19 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Chad Windham Mitchell appeals from a district court order denying his petition to extend the time to serve his complaint and dismissing his complaint for failure to timely effect service of process. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

After obtaining leave to proceed in forma pauperis, Mitchell filed his complaint against respondents the State of Nevada, Washoe County, and the Carson City Sheriff's Office (CCSO) on December 2, 2022, seeking declaratory and injunctive relief related to the conditions of his confinement at the CCSO jail. In both his complaint and a later "Motion for Alternative Service" filed on December 29, 2022, Mitchell alleged that the conditions of his confinement prevented him from obtaining sufficient copies of the summons and complaint in order to complete service, and that internal CCSO policies prevented him from obtaining sufficient paper or stamped envelopes to adequately litigate this case and his other cases before the court. Mitchell requested either that the court require the clerk's office to provide him with copies of his summons and complaint, or to permit him to complete service through some other alternative means. Ultimately, the

district court denied Mitchell's motion, concluding that it was not required to provide copies of filed pleadings to indigent pro se litigants under NRS 12.015 and stated that "[t]his Court cannot excuse Mr. Mitchell from adhering to the rules simply because he is a pro se litigant."

Later, on March 7, 2023, Mitchell mailed a timely "Petition for Extension of Time Limit for Required Service" wherein he repeated his arguments made in his earlier requests for relief, and requested an additional 90 days to deliver a waiver of service under NRCP 4.1, but noted that without a court order allowing him to obtain copies of the complaint, his handwritten reproductions of the same would be fraudulent as he is no longer incarcerated with the individuals who signed the declarations attached to the filed copy. Mitchell also maintained that he worked with Northern Nevada Legal Aid and was attempting to obtain outside payment to pay the district court clerk's office the funds necessary to obtain copies of the complaint. Shortly thereafter, Mitchell mailed a "Notice of Lawsuit and Request to Waive Service of Summons under Rule 4.1 of the Nevada Rules of Civil Procedure" to the defendants.

Ultimately, on April 7, 2023, the district court entered an "Order Denying Petition for Extension of Time and Dismissing Case" wherein it determined that Mitchell failed to establish good cause for an extension of time to serve the complaint, as he failed to demonstrate what efforts he undertook to serve the complaint by working with Northern Nevada Legal Aid, and that he failed to avail himself of the court's order directing the sheriff's office to serve his pleadings without charge. And because service of the complaint was untimely at the time the court considered Mitchell's petition, it dismissed the case without prejudice under NRCP 4(e)(2). Mitchell now appeals.

On appeal, Mitchell primarily argues that the district court abused its discretion when it denied his petition for an extension of time and dismissed his complaint as it failed to adequately consider all of the factors identified in *Moroney v. Young*, 138 Nev., Adv. Op. 76, 520 P.3d 358, 361 (2022), and *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 516, 998 P.2d 1190, 1195-96 (2000).

This court reviews both a dismissal for failure to effect timely service and a district court's good-cause determination for an abuse of discretion. *Moroney*, 138 Nev., Adv. Op. 76, 520 P.3d at 361. A district court's review of the factors under *Moroney*, as under *Scrimmer*, is left to the district court's discretion, and no one factor is outcome determinative. *Id.* at 362; *Scrimmer*, 116 Nev. at 516, 998 P.2d at 1195. Nonetheless, the *Moroney* court recognized that when reviewing a plaintiff's timely motion to extend the service period for good cause, "the district court must consider the *Scrimmer* factors that relate to the plaintiff's diligence in attempting service, and to any circumstances beyond the plaintiff's control that may have resulted in the failure to timely serve the defendant," in addition to any additional considerations related to the same. *Moroney*, 138 Nev., Adv. Op. 76, 520 P.3d at 361-62.<sup>1</sup>

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<sup>1</sup>The four *Scrimmer* factors relevant to a timely motion to extend the service period include:

(1) difficulties in locating the defendant, (2) the defendant's efforts at evading service or concealment of improper service until after the 120-day period has lapsed, (3) the plaintiff's diligence in attempting to serve the defendant, . . . and (10) any [previous] extensions of time for service granted by the district court.

*Moroney*, 138 Nev., Adv. Op. 76, 520 P.3d at 362.

Here, however, the district court's order only made findings related to Mitchell's diligence in serving the complaint—it did not specifically address any of the other factors identified in *Moroney* and, more importantly, failed to include an analysis of “any circumstances beyond the plaintiff's control that may have resulted in the failure to timely serve the defendant.” *Id.* at 362.

We conclude that the district court's omission here forecloses any meaningful appellate review of this issue, for “[a]lthough this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error.” *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (citations omitted); *see also Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011) (“Without an explanation of the reasons or bases for a district court's decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation.”). Accordingly, we conclude that the district court abused its discretion when it denied Mitchell's motion without proper analysis of the appropriate considerations outlined in *Moroney*.<sup>2</sup>

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<sup>2</sup>The district court potentially abused its discretion by sua sponte dismissing Mitchell's complaint without first issuing an order to show cause as required by NRCPP 4(e)(2) (“If 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.”). *See Moroney*, 138 Nev., Adv. Op. 76, 520 P.3d at 362 n.4. However, we need not reach this issue in light of our disposition and because Mitchell failed to raise this argument on appeal. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived).

We therefore reverse the judgment of the district court, and on remand, we direct the district court to hold further proceedings consistent with this order, including proper analysis of the *Moroney* factors. Additionally, our review of the record reveals that Mitchell has raised several procedural concerns with his incarceration that were not addressed by the district court's order, including his inability to obtain copies through either the Carson City or Washoe County Jails and that his attempts to obtain a file-stamped copy of his complaint from the Second Judicial District Court Clerk's Office were rejected by the district court. Thus, we direct the district court to specifically consider Mitchell's apparent inability to obtain the documents necessary for service when assessing whether he has demonstrated good cause under NRCP 4(e)(3).

It is so ORDERED.<sup>3</sup>



C.J.

Gibbons



J.

Bulla



J.

Westbrook

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<sup>3</sup>Although this court generally will not grant a pro se appellant relief without first providing the respondent an opportunity to file an answering brief, *see* NRAP 46A(c), based on the record before us, the filing of an answering brief would not aid this court's resolution of this case and thus, no such brief has been ordered.

Insofar as Mitchell raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. David A. Hardy, District Judge  
Chad Windham Mitchell  
Attorney General/Carson City  
Washoe District Court Clerk