

SUPREME COURT OF NEVADA

Carmen Sabater and Vincent James Desimone v. Shaun Razmy

139 Nev., Advance Opinion 50 (2023) · No. 85161 · Decided November 22, 2023

SUMMARY

The Nevada Supreme Court affirmed dismissal of a personal-injury tort action because the plaintiffs failed to serve the defendant within the required 120-day period and did not show good cause for their late request to extend the deadline. The court also held that a motion to dismiss for insufficient service of process under NRCP 12(b)(4) was timely because no responsive pleading had been filed.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Bell, J.; Cadish, J.; Pickering, J.
JURISDICTION	Nevada
DECIDED	November 22, 2023
DOCKET	85161
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court order dismissing a tort action without prejudice for failure to timely effect service of process.
STANDARD OF REVIEW	The denial of an extension of time to serve process and an order dismissing for failure to timely effect service are reviewed for abuse of discretion. The district court's interpretation of NRCP 12(b) is reviewed de novo.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Carmen Sabater, Vincent James Desimone v. Shaun Razmy

TOPICS

- service of process
- motions to dismiss
- appellate procedure
- standard of review
- personal injury

PRACTICE AREAS

- civil procedure
- torts
- appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying the plaintiffs' untimely motion for an extension of time to serve the summons and complaint.
2. Whether a motion to dismiss for insufficient service of process under NRCP 12(b)(4) is untimely when filed more than 21 days after service of the summons and complaint but before any responsive pleading is filed.

HOLDINGS

1. When a party fails to serve process within the initial 120-day period and fails to timely request an extension, the party must first demonstrate good cause for the delay in requesting the extension before the court considers whether good cause supports extending the service period. Because Sabater and Desimone did not show or preserve good cause for their late extension request, the district court properly denied the motion.
2. A motion to dismiss for insufficient service of process under NRCP 12(b)(4) may be filed at any time before a responsive pleading is filed; NRCP 12(b) imposes no separate 21-day deadline for such a motion. Because Razmy filed the motion before filing an answer, the motion was timely.

KEY QUOTATIONS

“When a plaintiff fails to demonstrate good cause for failing to seek an extension of time to serve the summons and complaint within the 120-day period prescribed by NRCP 4(e), the district court may properly deny an untimely motion for an extension of time.”

“Additionally, under NRCP 12, a motion to dismiss for insufficient service of process may be filed at any time before a responsive pleading is filed.”

FACTUAL BACKGROUND

In 2019, Sabater and Desimone were involved in a car crash with Razmy. They filed a negligence complaint on August 26, 2021, but failed to serve the summons and complaint within the 120-day period because counsel did not calendar the deadline. After the district court issued an order to show cause, they served Razmy 81 days late and sought a retroactive extension, attributing the delay to a calendaring error and staff turnover. Razmy moved to quash the untimely service and dismiss the action before filing an answer.

PROCEDURAL HISTORY

Sabater and Desimone filed a negligence complaint after a car crash but did not serve Razmy within the 120-day period prescribed by NRCP 4(e)(1). After the district court issued an order to show cause, they served Razmy 81 days late and sought a retroactive extension. The district court denied the extension for lack of good cause for the late request and granted Razmy's motion to quash service and dismiss the complaint. The Supreme Court of Nevada affirmed.

DISPOSITION

affirmed

CASES CITED

- Saavedra-Sandoval v. Wal-Mart Stores, Inc., 126 Nev. 592, 595, 597, 245 P.3d 1198, 1200-01 (2010)
- Scrimmer v. Eighth Judicial District Court, 116 Nev. 507, 516-17, 998 P.2d 1190, 1195-96 (2000)
- Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981)
- Abreu v. Gilmer, 115 Nev. 308, 312-13, 985 P.2d 746, 749 (1999)
- Marquis & Aurbach v. Eighth Judicial District Court, 122 Nev. 1147, 1156, 146 P.3d 1130, 1136 (2006)
- Morrow v. Eighth Judicial District Court, 129 Nev. 110, 113, 294 P.3d 411, 414 (2013)
- Hansen v. Eighth Judicial District Court, 116 Nev. 650, 656, 6 P.3d 982, 986 (2000)
- Opaco Lumber & Realty Co. v. Phipps, 75 Nev. 312, 314, 340 P.2d 95, 96 (1959)
- Simmons Self-Storage Partners, LLC v. Rib Roof, Inc., 130 Nev. 540, 548, 331 P.3d 850, 855 (2014)
- Scheinwald v. Bartlett, 51 Nev. 155, 157-58, 271 P. 468, 468-69 (1928)