

NEW MEXICO COURT OF APPEALS

Padilla v. Reed

No. A-1-CA-36117 · No. A-1-CA-36117 · Decided September 14, 2017

SUMMARY

The New Mexico Court of Appeals affirmed the dismissal of Thomas M. Padilla’s complaint for failure to serve Stacy L. Reed within the time ordered by the district court. The court held that the twenty-month delay in service, including the failure to meet the district court’s thirty-day deadline after reinstatement, supported dismissal under an objective due-diligence standard. The opinion is an unpublished memorandum opinion.

CASE DETAILS

COURT	New Mexico Court of Appeals
WRITING FOR THE COURT	J. Miles Hanisee; Michael E. Vigil; Stephen G. French
JURISDICTION	New Mexico
DECIDED	September 14, 2017
DOCKET	A-1-CA-36117
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from the Bernalillo County District Court's order granting Defendant's motion to dismiss for insufficient service of process.
STANDARD OF REVIEW	Abuse of discretion.
PRECEDENTIAL VALUE	unpublished; nonprecedential except as permitted by Rule 12-405 NMRA
PARTIES	Thomas M. Padilla v. Stacy L. Reed

TOPICS

- service of process
- motions to dismiss
- standard of review
- appellate procedure
- civil procedure

PRACTICE AREAS

- civil procedure
- torts
- appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by dismissing the complaint for Plaintiff's failure to exercise due diligence in serving Defendant within the court-ordered time.
2. Whether settlement negotiations and Plaintiff's notice to the district court excused the delay in service.

HOLDINGS

1. A district court may dismiss a complaint when, under an objective reasonableness standard, the plaintiff fails to exercise due diligence in serving the defendant, and the delay need not be intentional. The district court did not abuse its discretion in dismissing Plaintiff's complaint after a twenty-month delay in service and failure to meet the court-ordered thirty-day deadline.

KEY QUOTATIONS

"A district court may dismiss a complaint if, based on an objective reasonableness standard, the plaintiff fails to exercise due diligence in serving the complaint upon a defendant." (¶ 2)

"An abuse of discretion occurs if, considering the circumstances before the district court, the court "exceeds the bounds of reason[.]" (¶ 2)

FACTUAL BACKGROUND

Plaintiff filed a lawsuit shortly before the statute of limitations expired, alleging that Defendant was responsible for injuries from a car accident. The complaint remained unserved for approximately twenty months, including a period during which the district court dismissed the case for lack of prosecution. After reinstating the complaint, the district court gave Plaintiff thirty days to serve Defendant, but Plaintiff did not do so until fifty-two days after reinstatement. The record indicated that Defendant could have been served at the residence listed in the original police report.

PROCEDURAL HISTORY

Plaintiff filed a personal-injury complaint in October 2014 but did not serve Defendant. The district court dismissed the complaint for lack of prosecution in June 2015, later reinstated it on a motion to reconsider, and ordered Plaintiff to serve Defendant within thirty days. Plaintiff served Defendant fifty-two days after reinstatement, and the district court granted Defendant's motion to dismiss for insufficient service. The New Mexico Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Romero v. Bachicha, 2001-NMCA-048, ¶¶ 23-26, 130 N.M. 610, 28 P.3d 1151
- Graubard v. Balcro Co., 2000-NMCA-032, ¶ 12, 128 N.M. 790, 999 P.2d 434
- Summit Elec. Supply Co., Inc. v. Rhodes & Salmon, P.C., 2010-NMCA-086, ¶ 6, 148 N.M. 590, 241 P.3d 188

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