

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 The opinion is an unpublished memorandum opinion.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PRECEDENTIAL VALUE	unpublished; nonprecedential except as permitted by Rule 12-405 NMRA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

OPINION

PER CURIAM.

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

1 IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO 2 THOMAS M. PADILLA, 3 Plaintiff-Appellant, 4 v. No. A-1-CA-36117 5 STACY L. REED, 6 Defendant-Appellee. 7 APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY 8 Victor S. Lopez, District Judge 9 Ray A. Padilla, PC 10 Ray A. Padilla 11 Albuquerque, NM 12 for Appellant 13 Winger & Associates 14 Nathan Edward Winger 15 Albuquerque, NM 16 for Appellee 17 MEMORANDUM OPINION 18 HANISEE, Judge.

19 {1} Plaintiff appeals from a district court’s order granting Defendant’s motion to 20 dismiss the complaint. We issued a calendar notice proposing to affirm. Plaintiff has 1 responded with a memorandum in opposition. Not persuaded, we affirm the district 2 court. 3 {2} Defendant raises five issues that may be consolidated as a challenge to the 4 district court’s order granting Defendant’s motion to dismiss the complaint for 5 insufficient service of process within the time ordered by the district court.

A district 6 court may dismiss a complaint if, based on an objective reasonableness standard, the 7 plaintiff fails to exercise due diligence in serving the complaint upon a defendant. 8 *Romero v. Bachicha*, 2001-NMCA-048, ¶¶ 23-26, 130 N.M. 610, 28 P.3d 1151.

The 9 delay need not be intentional. *Id.* ¶ 23; *Graubard v. Balcor Co.*, 2000-NMCA-032, 10 ¶ 12, 128 N.M. 790, 999 P.2d 434. We review a district court’s dismissal under an 11 abuse of discretion standard. *Graubard*, 2000-NMCA-032, ¶ 12. An abuse of 12 discretion occurs if, considering the circumstances before the district court, the court 13 “exceeds the bounds of reason[.]” *Summit Elec.*

Supply Co., Inc. v. Rhodes & Salmon, 14 P.C., 2010-NMCA-086, ¶ 6, 148 N.M. 590, 241 P.3d 188 (internal quotation marks 15 and citation omitted). 16 {3} Here, Plaintiff filed a lawsuit just prior to the running of the statute of 17 limitations, alleging that Defendant was at fault for injuries sustained in a car accident. 18 The complaint was filed in October 2014, but was not served on Defendant.

[RP 1] In 19 June 2015 the district court dismissed the complaint for lack of prosecution. [RP 5] 2 1 Plaintiff filed a “[n]otice” to the Court, along with a motion to reinstate, asserting that 2 the parties were involved in settlement negotiations. [RP 6] The district court denied 3 the motion

after pointing out that the “notice” did not comply with Rule 1-041(E) 4 NMRA [RP 13] (motions to reinstate).

On April 26, 2016, the district court reinstated 5 the complaint on Plaintiff’s motion to reconsider, but stated that the case would be 6 dismissed if Plaintiff did not serve the complaint on Defendant within 30 days. [RP 7 22] Plaintiff did not serve Defendant until June 17, 2016, twenty months after the 8 filing of the complaint and fifty-two days following the district court’s reinstatement 9 of the complaint.

[RP 1, 24] Defendant then filed a motion to dismiss for insufficient 10 service, and the motion was granted by the district court. [RP 29, 51] 11 {4} Plaintiff continues to argue that dismissal was inappropriate because he was 12 in settlement negotiations, and he had informed the district court of this. [MIO 2] 13 However, our case law supports the court’s decision.

In Romero, this Court held that 14 a thirteen-month delay in serving the defendant justified dismissal when the plaintiff 15 had originally misnamed the defendant but was aware of the defendant’s name and 16 address. 2001-NMCA-048, ¶¶ 24-25.

Here, it appears that Defendant was served at 17 the same residence that was listed in the original police report that was made at the 18 time of the accident. [RP 31] In Graubard, we held that an intentional delay was not 19 necessary to dismiss for failure to serve process with due diligence in circumstances 3 1 of a fourteen-month delay. 2000-NMCA-032, ¶¶ 3, 11.

The delay in this case was 2 more egregious than either of these two cases, and it appears from the record that 3 effectuation of service was achievable as is required and was directed by the district 4 court upon reinstatement of Plaintiff’s complaint. Indeed, here, the district court gave 5 Plaintiff a second chance and additional time to serve the complaint on Defendant.

6 Yet, Plaintiff failed to satisfy his obligation of service or meet the district court’s 7 deadline. Given the broad deference that we give to the district court under the above- 8 noted abuse of discretion standard, we cannot say that the court erred here. 9 {5} For the reasons set forth above, we affirm. 10 {6} IT IS SO ORDERED. 11 _____ 12 J. MILES HANISEE, Judge 13 WE CONCUR: 14 _____ 15 MICHAEL E. VIGIL, Judge 16 _____ 17 STEPHEN G. FRENCH, Judge
4