

NEW MEXICO COURT OF APPEALS

Padilla v. Reed

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

OPINION

Padilla v. Reed

PER CURIAM.

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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