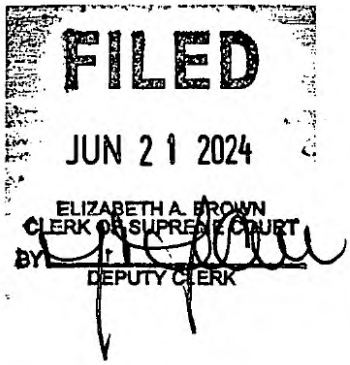
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN ELVIN TURNER,
Appellant,
vs.
LAS VEGAS METROPOLITAN POLICE DEPARTMENT; CLARK COUNTY; CLARK COUNTY DETENTION CENTER; AND OFFICER MARTINEZ,
Respondents.

No. 87110-COA



ORDER OF AFFIRMANCE

John Elvin Turner appeals from a district court order dismissing his complaint in a civil action. Eighth Judicial District Court, Clark County; Jacob A. Reynolds, Judge.

Turner, an inmate, initiated the underlying action against respondents, Las Vegas Metropolitan Police Department, Clark County Detention Center (CCDC), and a CCDC employee identified only as Officer Martinez in December 2022. Turner did not serve respondents but filed various motions in the district court which were set for hearings. Respondents' counsel appeared at the first hearing on April 6, 2023, and informed the court that none of the respondents had been served but they were aware of the hearing because Turner mailed the complaint to counsel's office. Based on the representation that respondents had not been served, the court issued an order to show cause, directing the parties to appear and show cause why the case should not be dismissed for failure to serve the

24-21667

summons and complaint within 120 days.[1] The court set the show-cause hearing for July 6, 2023.

At a May 23, hearing, the district court extended the service deadline, noting that the show-cause hearing was still set for July 6, and that Turner had until that date to serve respondents.

On June 23, Turner filed a motion to vacate the order to show cause hearing, arguing that the April 6th hearing was held without him, and he still had 12 days to serve respondents at that time. Despite this filing, the show-cause hearing proceeded as scheduled on July 6. The district court minutes show that respondents' counsel appeared at the hearing and informed the court that they had not heard from Turner, Turner had not appeared for any hearings, and he had still not served respondents. The district court subsequently entered a written order dismissing Turner's complaint for failure to serve respondents. This appeal followed.

On appeal, Turner argues that the district court erred in dismissing his complaint both because he filed a response to the order to show cause and because the court failed to have him appear virtually or telephonically at the hearing on the order to show cause.

NRCP 4(e) governs time limits for service of process, generally providing that "[t]he summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule." NRCP 4(e)(1). Additionally, NRCP 4(e)(2) requires dismissal if the plaintiff fails to complete service "before the 120-day service period—or any extension

[1]The 120-day deadline to serve respondents expired on April 18, 2023.

thereof—expires." We review the dismissal for failure to effect timely service of process for an abuse of discretion. *Moroney v. Young*, 138 Nev., Adv. Op. 76, 520 P.3d 358, 361 (2022).

On appeal, Turner does not argue that he served respondents, requested additional time to effectuate service, or provide any argument regarding the actions he took below, other than to say that he filed a response to the order to show cause. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Indeed, Turner fails to address, or even acknowledge, the service issues that resulted in the issuance of the show cause order and, ultimately, the dismissal of his case.

As the record demonstrates, it is undisputed that Turner failed to serve respondents. Below, Turner filed various motions which acknowledged that he had not effectuated service and, shortly before the initial 120-day service deadline expired, Turner filed a "motion for summons" in the district court, which summarily requested assistance with serving respondents. In response to this motion, the district court extended the service deadline from April 2023 until July 6, 2023, when the hearing on the order to show cause was scheduled to take place. Although the court did not grant further relief such as directing the constable or sheriff to assist Turner in serving the complaint, on appeal, Turner makes no mention of his motion for summons, nor does he argue that the district court improperly failed to assist him with serving respondents, and he has thus waived those issues. *See id.*

Although the district court extended the time for Turner to serve respondents, to the extent Turner was still unable to effectuate service, he did not seek further assistance in serving respondents, nor did

he seek additional time to do so. *See* NRCP 4(e)(3) (mandating that the district court extend the service period "*[i]f a plaintiff files a motion for extension*" before the service period has expired if a party shows "good cause" to grant the extension (emphasis added)); NRCP 4(e)(4) (requiring the district court to extend the service period "*[i]f a plaintiff files a motion for an extension*" after the expiration of the service period so long as the party shows "good cause" to explain the failure to bring a timely motion and "good cause" to grant the extension (emphasis added)). Instead, he filed a motion to vacate the hearing on the order to show cause, arguing only that, at the time the order to show cause was issued, he still had 12 days to serve respondents.

Thus, as set forth above, Turner's limited arguments regarding the filing of a response to the show cause order do not provide a basis for relief or otherwise show that the district court abused its discretion in dismissing his complaint for failure to perfect service on respondents. *See Moroney*, 138 Nev., Adv. Op. 76, 520 P.3d at 361.

Turner's contention that the district court improperly failed to have him appear by telephone or simultaneous audiovisual transmission equipment is similarly without merit. *See Byrd v. Byrd*, 137 Nev. 587, 595, 501 P.3d 458, 465 (Ct. App. 2021) (explaining that the district court has discretion in deciding whether to allow an appearance via audiovisual transmission). Under the Nevada Supreme Court Rules governing appearances via audiovisual or telephonic transmission, a party choosing to appear by either method at a proceeding must give notice to the court and

other parties of this intent. SCR Part IX-B(A), Rule 4(5)(a)[2] (providing the notice requirements a party must follow in order to appear by telephonic transmission equipment); SCR Part IX-B(B), Rule 4(5)(a) (providing the notice requirements a party must follow in order to appear by simultaneous audiovisual transmission equipment). Here, Turner never requested or gave notice of his intent to appear by virtual means as required by the rules. *See* SCR Part IX-B(A), Rule 4(5)(a); SCR Part IX-B(B), Rule 4(5)(a). Therefore, the district court did not abuse its discretion by not directing that Turner be allowed to appear remotely at the hearing on the order to show cause.

Thus, for the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.[3]



_____, C.J.
Gibbons



_____, J.
Bulla



_____, J.
Westbrook

---

[2]This rule was amended on December 22, 2023, and the amendments became effective on January 24, 2024. *See* SCR Part IX-B(A), Rule 4 (current version of the rule). In this order, we use the prior version of this rule in effect in July 2023 at the time of the hearing on the court's order to show cause.

[3]To the extent Turner raises other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.

cc: Hon. Jacob A. Reynolds, District Judge
John Elvin Turner
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk