

No. 83156
Supreme Court of Nevada

MARIA DEL ROSARIO CERVANTES-GUEVARA,

Petitioner,

VS.

CLARK COUNTY DISTRICT COURT, THE HONORABLE
JUDGE ERIKA BALLOU, DISTRICT JUDGE, DEPARTMENT 23
Respondents,

AND

MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, a
limited liability corporation;
Real Parties In Interest

**REPLY IN SUPPORT OF PETITION FOR
WRIT OF MANDAMUS**

JACQUELINE R. BRETELL, ESQ.

Nevada Bar No.: 12335

EVAN K. SIMONSEN, ESQ.

Nevada Bar No. 13762

BIGHORN LAW

2225 E. Flamingo Rd.

Building 2, Suite 300

Las Vegas, Nevada 89119

Phone: (702) 333-1111

Email: EvanS@BighornLaw.com

Attorneys for Petitioner

Electronically Filed
Sep 28 2021 04:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE.....	iv
TABLE OF AUTHORITIES.....	v
REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS	1
I. Petitioner’s Motion to Enlarge Time for Service was not Untimely	2
II. The Court Failed to Consider Whether Petitioner had Good Cause for Filing the Untimely Motion to Enlarge.....	6
III. Writ Relief is Appropriate Because it is the Least Prejudicial and Most Efficient Means of Resolving this Issue.....	8
CONCLUSION.....	11
CERTIFICATE OF COMPLIANCE.....	12
CERTIFICATE OF SERVICE.....	14

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner MARIA DEL ROSARIO CERVANTES-GUEVARA is an individual, and not a corporation.

Petitioner has been represented by, and only by, Bighorn Law.

/s/ Evan K. Simonsen, Esq.
Nevada Bar No.: 13762
BIGHORN LAW
2225 E. Flamingo Rd.
Building 2, Suite 300
Las Vegas, Nevada 89119
Phone: (702) 333-1111
Email: EvanS@BighornLaw.com

Attorney for Petitioner

Table of Authorities

Cases

<u>Mona v. Eighth Judicial Dist. Court of State in & for Cty. of Clark,</u>	
380 P.3d 836, 840 (Nev. 2016).....	9
<u>Smith v. Eighth Jud. Dist. Ct.,</u>	
113 Nev. 1343, 1345 (1997).....	9

Statutes, Administrative Orders and Emergency Directives

N.R.C.P. 4.....	1, 3-6, 10
Declaration of Emergency Directive 009 (Revised).....	2-3
Declaration of Emergency Directive 026.....	3
Supreme Court’s Administrative Order 20-17.....	5
NRS 34.170.....	9

**REPLY IN SUPPORT OF PETITION FOR WRIT OF
MANDAMUS**

Real Parties in Interest's Answer bases its argument on a flawed construction of the 120-day period and a misbegotten belief that Governor Sisolak's Directives tolled all time periods except the time period to perform service.

Not to put too fine a point on it, but Real Parties in Interest's Answer ignores the clear procedure set forth in NRCP 4, undisputed facts regarding the timeline of facts, and the clear purpose and intent of the Emergency Directives related to the novel Covid-19 pandemic. The simple truth is that NRCP 4 ***requires*** the Court to determine whether Petitioner's Motion to Enlarge Time was timely, and, if not, then ***requires*** the Court to make a determination of whether Petitioner had good cause for the untimely filing. Despite erroneously—as set forth herein—determining that the Motion was untimely, **the district court never discussed, or ruled on whether Petitioner had good cause for the supposed untimeliness in filing the Motion to**

Enlarge Time for Service. There can be no disputing that the court never addressed this element of “good cause” when issuing its Ruling on Petitioner’s Motion. PA-I 0099; *and* PA-II 0161-0166.

I. Petitioner’s Motion to Enlarge Time for Service was not Untimely

As argued in Petitioner’s initial Petition, the relevant timeline is calculated with a start date of January 7, 2020, when Petitioner filed her initial Complaint in this matter. 0001-0007. As such, the 120 period to serve Real Parties in Interest would typically have expired on May 6, 2020—if not for the global pandemic, and Nevada’s lockdown orders which tolled the time to complete service.

On March 12, 2020, Governor Sisolak declared a state of emergency due to COVID-19. See Declaration of Emergency Directive 009 (Revised). PA-I 0008-0010. This Emergency Directive states that “Any specific time limit set by state statute or regulation for the commencement of any legal action is hereby tolled from the date of this Directive until 30 days from the date

the state of emergency declared on March 12, 2020 is terminated.” See Declaration of Emergency Directive 009 (Revised). PA-I 0008-0010.

At that time, Petitioner had 36 days left before the expiry of the 120-day time limit set by N.R.C.P. 4. Therefore, as of the date of the lifting of the State of Emergency on July 1, 2020, Plaintiff still had 36 days within which to serve Real Party in Interest MARK THOMAS ANDERSON with the Summons and Complaint. However, as noted in Emergency Directive 009 (Revised), the tolling ended 30 days after the state of emergency was lifted.

Real Parties argue that Petitioner were required to request an extension “prior to the expiration of time to serve.” See Answer at 12:17-20. Yet, Petitioner did just that and requested her extensions prior to the expiration of time to serve.

Consequently, when the state of emergency was lifted as of July 1, 2020, the tolling did not end until 11:59 p.m. July 31, 2020. Petitioner’s remaining 36 days did not recommence until August 1, 2020. See Emergency Directive 026. PA-I 0011-0014. Petitioner

had until September 5, 2020 to effect service on Real Party in Interest MARK THOMAS ANDERSON under the initial 120-days pursuant to N.R.C.P. 4.

However, on June 5, Petitioner was granted an additional 90 days for service—not from June 5, 2020, but of the total amount of time left to perfect service. *See*, Decision & Order on record herein as filed on June 5, 2020. PA 0041-0042.

90 days from September 5, 2020 is December 4, 2020. Consequently, pursuant to the relevant Emergency Directives, Rules of Civil Procedure and Court Orders, Petitioner had until December 4, 2020 to complete service. Petitioner completed service by publication on November 12, 2020. *See* PA 0043.

Real Parties in Interest's calculations rely wholly upon a refusal to admit that the Emergency Directives added time to the relevant time periods to serve.

There is no disputing that the Emergency Directives tolled the Statutes of Limitations deadlines. *See*, PA-I 0109-0111. It is equally as clear that the Administrative Orders tolled *all* discovery deadlines during their pendency. *See* Eighth Judicial

District Court Administrative Order 20-17. PA-I 0015-0047. The clear spirit of all of these Directives and Orders was to be interpreted liberally to allow for extensions of time, given the unprecedented pandemic. See, District Court Order in Case No. A-20-821501-C, PA-I 0109-0111.

Nevertheless, Real Parties in Interest fail to show why the tolling provisions and extensions of time are applicable to every other regulatory and judicial deadline—except for NRCP Rule 4. Real Parties also fail to explain away the testimony and interpretation of Justice Gibbons given at hearings on the same topic.

Taken together, the Emergency Directives and Administrative Orders, both in spirit and in fact, along with the prior deadlines and extensions thereof, support a finding that Plaintiff's Motion to Enlarge Time for Service was timely, as the deadline for service terminated on December 4, 2020. However, even assuming, *arguendo*, that the Motion was not timely, the court failed to complete its analysis of the Motion before issuing its ruling.

II. The Court Failed to Consider Whether Petitioner had Good Cause for Filing the Untimely Motion to Enlarge

As set forth in Petitioner's initial briefing, if the court determines that a Motion to Enlarge Time for Service is deemed untimely, NRCP Rule 4 ***requires*** that the district court consider whether the movant had good cause for the untimely filing. *See* NRCP 4(e)(4).

Here, as is clearly set forth in the Minute Order issued by the court on December 16, 2020, the Court determined that Petitioner's Ex Parte Motion to Enlarge Time for Service was untimely and, "Therefore, COURT ORDERS, Plaintiff's Ex Parte Motion to Enlarge Time for Service and Serve by Publication is DENIED." PA-I 0128. The Minute Order goes on to say, in the next sentence: "Further, COURT ORDERS, Defendant's Countermotion to Dismiss Plaintiff's Complaint is GRANTED..." PA-I 0128. There is no mention of any consideration or analysis as to good cause anywhere in the Minute Order, nor did the district court ever address the issue during the hearing on the Motion. PA-I 0128; *and*, PA-I 0100-0108. As is clear from the

transcript of the hearing, the court took arguments as to timeliness into consideration, and then issued its ruling, only as it pertains to timeliness and **never considered whether there was good cause for the untimeliness.**

It is therefore disingenuous for Real Parties in Interest to allege that Petitioner failed to meet the burden of ‘good cause,’ given that the district court never addressed the issue. As set forth in Petitioner’s initial briefing, as well as in Petitioner’s Motion for Reconsideration of the Minute Order, good cause clearly exists herein.

The mere fact that this writ of mandamus exists shows that there is definitive ambiguity regarding the exact intent of the Emergency Directives and Administrative Orders. Given that ambiguity, there was no reason for Petitioner to believe that the time for service had run and that the Motion to Enlarge time was therefore timely.

While Real Parties in Interest endeavor to explain why the attempts at service do not evidence good cause in the timeliness of filing, they fail altogether to provide any argument regarding

Petitioner's reasonable belief that there was no need to file the Motion earlier. As set forth more fully in Petitioner's initial briefing, Petitioner's interpretation of the Emergency Directives and Administrative Orders was reasonable and meant that the Motion to Enlarge was filed timely. Real Parties in Interest have failed to explain why this belief was unreasonable, nor have they managed to set forth a basis for finding that this reasonable interpretation did not satisfy the 'good cause' element.

Consequently, while Petitioner steadfastly maintains that the Motion was timely based on the relevant Emergency Directives and Administrative Orders, even it was not *timely* based on the ambiguities in said Directives and Orders, Petitioner's interpretation was reasonable, thereby satisfying the 'good cause' element of an untimely filing.

III. Writ Relief is Appropriate Because it is the Least Prejudicial and Most Efficient Means of Resolving this Issue

Real Parties argue that Writ Relief is not appropriate as Petitioner could just file an appeal years from now when

Petitioner's claims against Thor Development are completed and Petitioner is able to make a final appeal on this matter.

Where there is no “plain, speedy, and adequate remedy” available at law, extraordinary relief may also be available via writ of mandamus or prohibition. See Mona v. Eighth Judicial Dist. Court of State in & for Cty. of Clark, 380 P.3d 836, 840 (Nev. 2016) (citing, inter alia, NRS 34.170). **Even if an adequate legal remedy exists, this Court will still consider a writ petition if an important issue of law needs clarification or if review would serve a public policy or judicial economy interest.** See *Id.* The interests of judicial economy are paramount, considered “the primary standard” in determining whether to entertain a writ petition. See Smith v. Eighth Jud. Dist. Ct., 113 Nev. 1343, 1345 (1997). Petitioners’ case satisfies all the criteria for entertaining a writ petition.

It is highly prejudicial to Petitioner to force her to litigate her claims against Thor Development before requiring her to finally file an appeal against Real Party Anderson, and then re-litigate the same case.

It is highly prejudicial to the interests of judicial economy and the Courts to do the same. Mr. Anderson belongs in these proceedings as an essential party. Petitioner complied with Rule 4's deadlines in serving Mr. Anderson in the midst of an unprecedented pandemic.

Petitioner should not be forced to wait longer to have all essential parties named in this complaint. The district court, already stretched thin due to the demands of litigation and staffing during a pandemic, as well as the backlog of litigation—cannot be forced to endure double litigation when the district court's clear error in analyzing the Emergency Directives can be corrected now, at the outset of litigation.

Petitioner timely served Real Party Anderson. Furthermore, the Court failed to properly consider whether good cause existed for any perceived delay in serving him. As such, the Court is warranted in reversing the District Court's Order as to Mark Anderson and allowing for litigation to proceed based on his timely service under NRCP Rule 4.

CONCLUSION

Petitioner respectfully requests that the Court grant this Petition and enter an order directing the district court to reverse its prior decision dismissing Real Parties in Interest. These Parties were properly and timely served based upon the tolling of time to serve parties effectuated by the Court's Administrative Orders.

Respectfully submitted September 28, 2021.

/s/ Evan K. Simonsen
JACQUELINE R. BRETELL, ESQ.
Nevada Bar No.: 12335
EVAN K. SIMONSEN, ESQ.
Nevada Bar No. 13762
BIGHORN LAW
2225 E. Flamingo Rd.
Building 2, Suite 300
Las Vegas, Nevada 89119
Phone: (702) 333-1111
Email: EvanS@BighornLaw.com
Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in 14-size font.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 972 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume

number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

/s/ Evan K. Simonsen

JACQUELINE R. BRETELL, ESQ.

Nevada Bar No.: 12335

Evan K. Simonsen, ESQ.

Nevada Bar No. 13762

BIGHORN LAW

2225 E. Flamingo Rd.

Building 2, Suite 300

Las Vegas, Nevada 89119

Phone: (702) 333-1111

Email: Evans@BighornLaw.com

Attorneys for Petitioner