



¶1 David T. Kec appeals the superior court's dismissal of his complaint for judicial review of an administrative decision. For the following reasons, we affirm.

#### **BACKGROUND**

¶2 On February 12, 2010, Kec filed an amended complaint challenging the Arizona Department of Transportation ("ADOT") Executive Hearing Office's rulings sustaining ADOT's orders suspending his driver's license and extending the time during which Kec was required to use a certified ignition interlock device.<sup>1</sup> The superior court directed Kec, pursuant to Arizona Revised Statutes ("A.R.S.") section 12-906 (2003), to serve a copy of the amended complaint and a summons on the ADOT Motor Vehicle Division ("MVD"),<sup>2</sup> and file notice of the action with either the office of administrative hearings or the agency that conducted the hearing. Kec failed to file any such proof of service.

¶3 On May 24, 2010, the superior court ordered Kec to serve the amended complaint on ADOT, to file notice of the

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<sup>1</sup> Kec filed his original complaint on April 6, 2009, but despite repeated warnings from the superior court that it would dismiss the action unless he served the complaint, he never filed proof of service. After conducting a status conference with Kec, the court allowed him to file the amended complaint.

<sup>2</sup> Kec's amended complaint did not name a defendant. However, the court noted that in an action to review the decision of an administrative agency, the agency must be served with a copy of the summons and complaint. A.R.S. § 12-906.

action with either the office of administrative hearings or the agency that conducted the hearing, and to file proof of having done so. The court warned Kec that if he did not comply by June 30, 2010, it would dismiss the action. On July 1, 2010, Kec filed a document to which he attached the first page of the court's May 24, 2010 order. The document, which was signed by Kec, stated:

I have filed the ORIGINAL of the attached document(s) on 2/12/2010 with the Clerk of the Superior Court of Arizona in Maricopa County.

I have mailed/delivered a COPY of the attached document(s) on 2/12/2010 to Judge McClennen.

I have mailed/delivered a COPY of the attached document(s) on 6/15[2010] to: . . . Executive Hearing Office & MVD, 3737 N. Seventh St 160, Phoenix AZ 85014.

After reviewing the document, the superior court concluded Kec had failed to serve ADOT and dismissed his action.<sup>3</sup> Kec timely appealed.

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<sup>3</sup> The court's order did not specify whether its dismissal was with or without prejudice. We therefore treat it as an adjudication on the merits. See Ariz. R. Civ. P. 41(b). Even if the court had ruled without prejudice, we would consider this appeal because Kec is unable to timely re-file his complaint. A.R.S. § 12-904(A) ("An action to review a final administrative decision shall be commenced by filing a complaint within thirty-five days from the date when a copy of the decision sought to be reviewed is served upon the party affected."); *cf. Maher v. Urman*, 211 Ariz. 543, 545-50, ¶¶ 1-20, 124 P.3d 770, 772-77 (App. 2005) (superior court dismissed plaintiff's complaint without prejudice for failure to timely serve; statute of

## DISCUSSION

¶4 Kec's appellate brief fails to state the issues presented for review, as required by Arizona Rule of Civil Appellate Procedure 13(a)(5). Nevertheless, his brief may be fairly read to challenge the superior court's dismissal of the amended complaint based upon his failure to serve ADOT.<sup>4</sup>

¶5 We review de novo the superior court's dismissal for failure to serve. See *Mahe*, 211 Ariz. at 546, ¶ 6, 124 P.3d at 773 (stating questions involving interpretation and application of court rules are reviewed de novo).

¶6 To obtain judicial review of ADOT's discretionary licensing actions, a party must file a complaint in superior court. A.R.S. §§ 12-904(A), -905(B) (2003); A.R.S. § 28-3317 (2004). He or she must then serve a copy of the summons and complaint "as in civil actions and as provided by the rules of civil procedure, upon the agency at its principal office and upon all other defendants." A.R.S. § 12-906. Arizona Rule of Civil Procedure 4(i) requires a plaintiff to serve a summons and complaint on a defendant within 120 days after filing the complaint. Service is accomplished on a governmental entity by

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limitations had run on cause of action and appellate court exercised jurisdiction over the appeal).

<sup>4</sup> Kec also raises issues related to the underlying administrative proceedings. Because we determine the superior court properly dismissed Kec's action, we do not consider those arguments.

delivering a copy of the summons and complaint to the person, officer, group, or body responsible for its administration or the appropriate legal officer. Ariz. R. Civ. P. 4.1(i), (j). An authorized person must accomplish the service and provide proof to the court. Ariz. R. Civ. P. 4(d), (g). The record contains no indication that Kec ever served ADOT with the complaint and a summons as required by Rule 4(i).

¶7 Once Kec filed his amended complaint, the superior court ordered him to (1) serve ADOT with a copy, (2) file notice of the action with ADOT (the agency that conducted Kec's administrative hearing), and (3) file proof that he had done so with the court.<sup>5</sup> The court specifically warned Kec that his failure to comply with its order would result in dismissal of his action. Kec did not file proof of service.

¶8 Kec argues he did serve ADOT on June 15, 2010, citing his July 1, 2010 filing. That document, however, only evidences that Kec mailed or delivered a copy of the court's May 24, 2010 order to ADOT's executive hearing office. There is no evidence in the record that Kec served ADOT with a copy of the amended

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<sup>5</sup> The court's order granted Kec more than 120 days after the filing of the amended complaint to accomplish service and did not require him to serve a summons with his complaint, thus arguably altering the service requirements. See Ariz. R. Civ. P. 4(i); *Blair v. Burgener*, 226 Ariz. 213, 219-20, ¶ 20, 245 P.3d 898, 904-05 (App. 2010) (stating superior court may order alternate service method as long as new method complies with due process).

complaint. Accordingly, we find no error in the court's dismissal of Kec's action for judicial review. See *Smith v. Smith*, 117 Ariz. 249, 252-53, 571 P.2d 1045, 1048-49 (App. 1977).

**CONCLUSION**

¶9 For the foregoing reasons, we affirm.

/s/

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MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

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PATRICIA K. NORRIS, Judge

/s/

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PHILIP HALL, Judge