

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL C. SCHER,

No. 15-16127

Plaintiff-Appellant,

D.C. No. 2:14-cv-02105-APG-
CWH

v.

CITY OF LAS VEGAS; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

Submitted November 16, 2016**

Before: LEAVY, BERZON, and MURGUIA, Circuit Judges.

Michael C. Scher appeals pro se from the district court's order dismissing his action alleging federal claims against numerous individuals and the City of Las Vegas arising from court proceedings related to a traffic violation. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

district court's decision regarding the sufficiency of service of process. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002). We vacate and remand.

The district court dismissed Scher's action without prejudice for failure to effectuate proper service in compliance with Rule 4 of the Federal Rules of Civil Procedure because Scher only sent the summons and a copy of the complaint via certified mail. However, the record shows that Scher also submitted proofs of service indicating that the Las Vegas Constable's Office served all defendants, personally or through representatives authorized to accept service of process, within the prescribed time. Moreover, in their reply to Scher's opposition to their motion to dismiss, defendants note Scher's "apparent sufficiency of service upon the City of Las Vegas," but the district court did not reference this in its dismissal order, or address whether service effectuated through the Las Vegas Constable's Office was proper with respect to the individual defendants. Thus, we vacate and remand for the district court to revisit whether service of process on the City of Las Vegas and on the individual defendants was proper.

Scher's pending motion is denied.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.