IN THE SUPREME COURT OF THE STATE OF NEVADA

ABBOTT TRANSPORTATION, INC.; TIM ABBOTT, INDIVIDUALLY, D/B/A ABBOTT TRANSPORTATION, INC.; AND DARLA ABBOTT, Appellants, vs. LEXINGTON INSURANCE COMPANY; RICHTER ROBB, INC.; NANCY DEAN; AND GEORGE SMITH, Respondents.	No. 43395
LEXINGTON INSURANCE COMPANY, Appellant, vs. ABBOTT TRANSPORTATION, INC.; TIM ABBOTT, INDIVIDUALLY AND D/B/A ABBOTT TRANSPORTATION, INC.; AND DARLA ABBOTT, INDIVIDUALLY, Respondents.	No. 43526

FILED

JAN 23 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Consolidated appeals from a district court order dismissing an insurance case and a post-judgment order denying a motion for costs. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

The underlying case in this appeal began as a lawsuit brought by the Abbott parties on October 21, 1998, against Lloyd's of London, based on Lloyd's alleged failure to pay on an insurance claim. The case against Lloyd's proceeded to trial in June of 2002, which was prior to the expiration of the NRCP 41(e) five-year period. During the trial, the parties settled. However, during the course of the trial, the Abbott parties discovered the identities of additional defendants and sought, and were

08-01679

granted, leave to file an amended complaint against these new parties in the same district court case. The Abbott parties filed their amended complaint on April 2, 2003, naming numerous parties, including the respondents in this case, as defendants. The district court later expressed its intention to dismiss the underlying case against these newly added defendants pursuant to the five-year rule provided by NRCP 41(e), and, after briefing by the parties, entered an order dismissing the case on those grounds. The Abbott parties appeal from this order in Docket No. 43395.

After the case was dismissed, two of the added defendants, Lexington Insurance Company and Rick Parker, moved to tax costs. The district court denied the motion, noting that Lexington and Parker did not succeed on any significant issue in the litigation; rather the case was dismissed on procedural grounds because the Abbott parties failed to bring the case to trial in a timely fashion as required by NRCP 41(e). Lexington appeals from this order in Docket No. 43526.

NRCP 41(e) requires the district court to dismiss any action that is not brought to trial within five years after the plaintiff has filed the action, unless both parties agree to an extension of time. In United Association of Journeymen v. Manson, this court established that under NRCP 41(e), "the original claim and any crossclaims, counterclaims and third-party claims are all part of one 'action.'"[1] Therefore, regardless of the date a claim or counterclaim is added, this court determined that all claims must be brought to trial within five years of the date that the plaintiff filed his or her original complaint.[2] Here, the Abbott parties filed

---

[1]105 Nev. 816, 820, 783 P.2d 955, 958 (1989).

[2]Id.

their original complaint against Lloyd's and Papper on October 21, 1998. Accordingly, under NRCP 41(e), they were required to bring their entire action, including their claims against respondents, to trial within five years of this date.

The Abbott parties assert that they fulfilled this requirement, arguing that for the purposes of NRCP 41(e), the partial trial that took place in June of 2002, prior to their settlement with Lloyd's and Papper, constituted a "trial" of their entire action against all parties, including respondents. In this, the Abbott parties note that in French Bouquet Flower Shoppe v. Hubert, this court determined that so long as trial "commences" prior to the five-year time limit, the requirements of NRCP 41(e) are satisfied.[3] Under French Bouquet, when a district court swears in a witness with actual knowledge of the events at issue, has the witness testify, and then continues trial, this "is sufficient to commence trial and thus toll the limitations period specified in NRCP 41(e)."[4] The Abbott parties argue that because they clearly brought their claims against Lloyd's to trial under French Bouquet, and because Mason establishes that all claims, subsequent cross-claims, and counterclaims are part of one "action" for the purposes of NRCP 41(e), the Abbott parties argue that the trial of their claims against Lloyd's constituted a trial of their entire "action," including their future claims against the respondents.

We conclude that this argument lacks merit. Recently, in Monroe v. Columbia Sunrise Hospital,[5] this court determined that when

---

[3]106 Nev. 324, 326, 793 P.2d 835, 836 (1990).

[4]Id.

[5]123 Nev. ___, 158 P.3d 1008 (2007).

an action involves multiple parties, that action may be brought to trial with respect to some parties for the purposes of NRCP 41(e), but not with respect to others.[6] Specifically, we noted that "when an action includes multiple plaintiffs, that action may be brought to trial between a single plaintiff and defendant for the purposes of NRCP 41(e), so long as the disposition completely resolves all claims between those two parties."[7] We conclude that the reasoning in Monroe is analogous to the situation here, indicating that while the June 2002 trial of the Abbott parties' claims against Lloyd's constituted a trial of the entire "action" between the Abbott parties and Lloyd's under French Bouquet, it did not constitute a trial of the "action" between the Abbott parties and the respondents. Accordingly, because the Abbott parties did not bring their claims against respondents to trial within five years, the district court did not err in dismissing the action between the Abbott parties and respondents pursuant to NRCP 41(e).

Based on this dismissal, respondent Lexington argues that it is entitled to costs as a prevailing party pursuant to NRS 18.020(3). "A district court's decision regarding an award of costs will not be overturned absent a finding that the district court abused its discretion."[8] NRS 18.020 provides that in cases in excess of $2,500, "[c]osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered . . . ." Although this court has not defined the term

---

[6]Id. at ___, 158 P.3d at 1011.

[7]Id.

[8]Village Builders 96 v. U.S. Laboratories, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005).

"prevailing party," as it relates to NRS 18.020, the district court relied on this court's holding in Sack v. Tomlin,[9] which dealt with the award of attorney fees under NRS 18.010, and concluded that "the definition of a prevailing party is one who succeeds on any significant issue in litigation which achieves some benefit sought in the suit." Because this case was dismissed sua sponte on procedural grounds, the district court determined that Lexington did not succeed on a "significant issue in the litigation" and, thus, was not entitled to costs. We agree. Based on the sound analysis supporting its decision, we conclude that the district court did not abuse its discretion in denying Lexington's motion to tax costs.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Cherry

_____, J.
Saitta

cc: Hon. Connie J. Steinheimer, District Judge
Lester H. Berkson, Settlement Judge
Laxalt & Nomura, Ltd./Reno
Lincoln, Gustafson & Cercos
Mirch & Mirch
Washoe District Court Clerk

---

[9]110 Nev. 204, 871 P.2d 298 (1994).