

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN X. HIGH,
Appellant,

vs.

DEBRA PERKINS, CYNTHIA
ANGELOPOUS, CORRECTIONAL OFFICER
BARNES, CORRECTIONAL OFFICER
SEARLE, CORRECTIONAL OFFICER
HUSTON, CORRECTIONAL OFFICER
THORNBURG, MARK HUGHES, SENIOR
CORRECTIONAL OFFICER WILLIAMS,
SENIOR CORRECTIONAL OFFICER
PERKINS, SENIOR CORRECTIONAL
OFFICER MONROE, SHARON GRANT,
SHEILA BOGOGER, DEBI LIGHTSEY,
CORRECTIONAL CASEWORKER
SPECIALIST KERR, ZOETTA WAGENNER,
ADAM ENDEL, MARK DRAIN, BECKY
MESSICK, CHAMBLISS, ELDON K.
MCDANIEL, DWIGHT NEVEN, WILLIAM A.
DONAT, ROBERT BAYER, KENNY C.
GUINN, FRANKIE SUE DEL PAPA, DEAN
HELLER, AND THE STATE OF NEVADA,
Respondents.

No. 43470

FILED

JAN 06 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

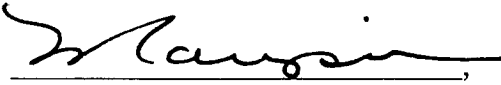
ORDER OF AFFIRMANCE

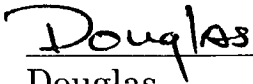
This is a proper person appeal from a district court order granting respondents' motion to dismiss for failure to prosecute pursuant to NRCP 41(e). Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

Appellant challenges the district court's dismissal of the underlying case under the two-year discretionary dismissal rule of NRCP 41(e). NRCP 41(e) provides that "[t]he court may in its discretion dismiss any action for want of prosecution on motion of any party or on the court's own motion and after due notice to the parties, whenever plaintiff has

failed for two years after action is filed to bring such action to trial.”¹ This court has held that “the only limitations upon the discretionary power of a court to dismiss a cause for delay in its prosecution is that such power must not be abused.”² Absent a showing that the district court grossly abused its discretion in dismissing an action for lack of prosecution, its decision will not be disturbed on appeal.³ There is nothing in the record to indicate that the district court abused its discretion in dismissing the underlying case pursuant to NRCP 41(e). Accordingly, we affirm the district court’s order.

It is so ORDERED.⁴


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

¹NRCP 41(e) (1988).

²Northern Ill. Corp. v. Miller, 78 Nev. 213, 215-16, 370 P.2d 955, 956 (1962).

³Id. at 216, 370 P.2d at 956.

⁴It appears that we have jurisdiction over this appeal under this court’s decision in Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992), as the date on the notice of appeal’s certificate of service falls within the NRAP 4(a) thirty-day period for filing an appeal. We need not address this issue, however, as the appeal lacks merit and we affirm the district court’s order. Had the appeal ultimately been found untimely and a determination been made that this court lacked jurisdiction, the same result would have been reached, as the appeal would have been dismissed.

We direct the clerk of this court to conform the caption on the docket with the caption on this order.

cc: Hon. Dan L. Papez, District Judge
Juan X. High
Attorney General Brian Sandoval/Ely
White Pine County Clerk