

IN THE SUPREME COURT OF THE STATE OF NEVADA

H. BRUCE COX AND SUE ANN COX,
HUSBAND AND WIFE,
Appellants,
vs.
REED SCOTT,
Respondent.

No. 43609

FILED

MAY 30 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting summary judgment in a real property dispute. Eighth Judicial District Court, Clark County, Jackie Glass, Judge.

Appellants H. Bruce Cox and Sue Ann Cox (the Coxes) argue, inter alia, that the district court erred by (1) failing to dismiss this case for want of prosecution and (2) granting summary judgment. We agree. The parties are familiar with the facts; therefore, we do not recount them in this order except as is necessary for our disposition.

Standard of review

This court reviews questions of law de novo.¹ It also reviews a district court's grant of summary judgment de novo.² Having reviewed the

¹Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003).

²Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

record in light of that standard, we reverse the district court's order and remand this case to the district court for two reasons.

First, NRCP 41(e) requires the district court to dismiss a case for want of prosecution when the plaintiff fails to bring it to trial within five years of its filing.³ In United Ass'n of Journeymen v. Manson, we carved out a limited exception to the mandatory dismissal requirement of NRCP 41(e) in cases where a plaintiff files an ultimately successful motion for summary judgment before the five-year time limit expires.⁴ We conclude that the Manson exception does not apply here because there were no motions pending before the district court when the NRCP 41(e) time period expired. Despite that fact, the district court granted summary judgment after the NRCP 41(e) deadline, in violation of the rule. Therefore, this case should have been dismissed.

“A dismissal under [NRCP 41] subdivision (e) is a bar to another action upon the same claim for relief against the same defendants unless the [district] court otherwise provides.”⁵ The courts have limited discretion to dismiss a case without prejudice where the circumstances of

³When applying NRCP 41(e), “the original claim and any crossclaims [and] counterclaims . . . are all part of one ‘action,’” and one cannot be dismissed under the rule without dismissal of the entire action. United Ass'n of Journeymen v. Manson, 105 Nev. 816, 820, 783 P.2d 955, 958 (1989).

⁴Id. at 819-20, 783 P.2d at 957.

⁵NRCP 41(e).

the case so justify.⁶ Here, it appears that a dismissal without prejudice is justified in order to preserve the parties' remedy of having the issues concerning the title of their real property resolved.

Second, although our determination that the district court erred by failing to dismiss this case under NRCP 41(e) for want of prosecution is dispositive of this matter, we note that with respect to the district court's summary judgment to respondent Reed Scott, it appears that, in this case, there are a number of issues of material fact that remain unresolved.⁷ Those issues render this case ineligible for summary judgment.⁸

Based on the foregoing, we conclude that the district court erred by denying the Coxes' motion to dismiss under NRCP 41(e) and by granting summary judgment when there are material issues that remain

⁶See Home Sav. Ass'n v. Aetna Cas. & Surety, 109 Nev. 558, 563, 854 P.2d 851, 854 (1993).

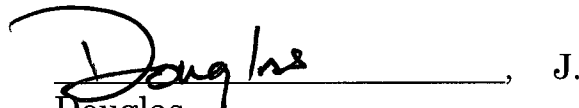
⁷Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (summary judgment is appropriate where "no 'genuine issue as to any material fact [remains] and . . . the moving party is entitled to a judgment as a matter of law'" (quoting NRCP 56(c)) (brackets in original)).

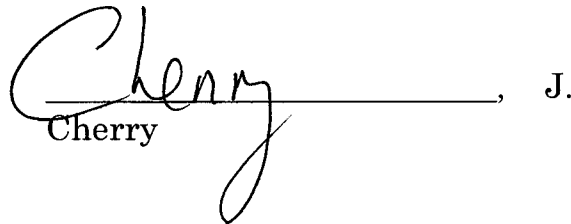
⁸Those issues include, *inter alia*, the nature and scope of the parties' interests in the subject property and water rights; the extent to which those interests, if any, have been altered by the numerous transactions that have taken place since the parties originally acquired the property; whether "the property . . . is so situated that partition cannot be made without great prejudice to the owners," as required by NRS 39.120; whether the factual issues relating to any other claims raised by the parties under NRS Chapter 39 have been resolved; and whether the other claims asserted by the Coxes are factually colorable.

unresolved.⁹ Therefore, we REVERSE the judgment of the district court and REMAND this matter for proceedings consistent with this order.¹⁰

It is so ORDERED.


Gibbons


Douglas J.


Cherry J.

cc: Hon. Jackie Glass, District Judge
Ara H. Shirinian, Settlement Judge
Hutchison & Steffen, Ltd.
Christopher F. Klink
Eighth Judicial District Court Clerk

⁹In view of the forgoing, we conclude that it is not necessary for us to address the other issues raised by the parties.

¹⁰We anticipate that the parties will re-file their claims after the district court dismisses them without prejudice. Because Dept. 5 conducted the parties' settlement conference in this case, the case, once it is re-filed, should be assigned to another department. We further instruct the district court to give that re-filed case a preferential trial setting as allowed under NRCP 40 in light of the advanced age of some of the parties.