

IN THE SUPREME COURT OF THE STATE OF NEVADA

JO ANN JACKSON,
Appellant,
vs.
CITY OF NORTH LAS VEGAS, A
POLITICAL SUBDIVISION OF THE
STATE OF NEVADA; CLARK COUNTY
SCHOOL DISTRICT, A POLITICAL
SUBDIVISION OF THE COUNTY OF
CLARK; AND HOUSING AUTHORITY
OF THE CITY OF NORTH LAS VEGAS,
Respondents.

No. 44457

FILED

FEB 08 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing, pursuant to NRCPC 41(e), two civil rights/tort actions and denying as moot all pending motions in those two cases. Eighth Judicial District Court, Clark County; Noel E. Manoukian, Judge.

Facts and Procedural History

I. Original district court proceedings

In the district court, appellant Jo Ann Jackson filed two separate civil rights/tort actions, Case No. A357614, filed on March 28, 1996, and Case No. A366925, filed on November 25, 1996. In both cases, Jackson named respondents, among many others, as defendants. Originally, the district court dismissed Jackson's actions, based primarily on the statute of limitations in Case No. A357614, and on res judicata principles and jurisdictional concerns in Case No. A366925.

II. Jackson's first appeal to this court

On appeals from those dismissal orders, this court entered an order reversing the district court's dismissal in Case No. A357614 and

remanding the matter for trial. This court dismissed for lack of jurisdiction the appeal in Case No. A366925, since Jackson's claims against two defendants were not formally resolved by the order and, thus, no final, appealable district court order had been entered in that case.¹

III. District court proceedings following remand/dismissal

Remittiturs were transmitted to the district court on July 23, 2001. Thereafter, the district court dismissed both actions in a single order, dated November 30, 2004, after finding that Jackson had failed to bring either case to trial within the three-year time frame set forth under NRCPC 41(e) for matters proceeding after remand. Jackson appeals.

IV. Jackson's present appeal to this court

On appeal, Jackson assigns error, first, to the district court "improperly and illegally consolidat[ing]" Case Nos. A357614 and A366925, and dismissing those cases on a "technicality" before ruling on outstanding motions. Jackson also asserts that Senior Judge Manoukian, to whom the cases were assigned, along with respondents' attorneys, acted "in concert," to "deliberately and maliciously" create confusion in the proceedings below, and that the "opposing attorneys and eighteen (18) District Court Judges prevented [her] cases [from] moving forward."

Discussion

I. Consolidation issue

Although the district court dismissed Case Nos. A357614 and A366925 in a single order, the cases were never consolidated in the district

¹Jackson v. City of North Las Vegas, Docket No. 29305, consolidated with Docket No. 30995 (Order of Reversal and Remand (Docket No. 29305) and Dismissing Appeal (Docket No. 30995), June 11, 2001).

court. Accordingly, any error assigned to the district court improperly consolidating the two cases is without merit.²

II. NRCP 41(e) issues

Next, although Jackson characterizes the district court's dismissal order as being grounded on a "technicality," that order was based on NRCP 41(e), which provides that any action not brought to trial within five years "shall be dismissed." That rule further provides that, after an order has been appealed and the cause remanded for trial, "the action must be dismissed by the trial court . . . unless brought to trial within 3 years from the date upon which remittitur is filed by the clerk of the trial court."

Here, Case No. A357614 falls squarely within the three-year rule for remanded cases, since, on Jackson's earlier appeal, this court reversed the district court's dismissal order and remanded the matter for trial.³ With respect to Case No. A366925, because this court never had jurisdiction over Jackson's earlier appeal from the district court's partial dismissal order in that case, that matter was not "remanded" and was therefore subject to dismissal under NRCP 41(e)'s five-year period for

²Cf. State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 453, 92 P.3d 1239, 1244 (2004) (explaining that the district court has wide discretion to control the conduct of proceedings pending before it).

³Jackson, Docket No. 29305, consolidated with Docket No. 30995 (Order of Reversal and Remand (Docket No. 29305) and Dismissing Appeal (Docket No. 30995)); see McGinnis v. Consolidated Casinos Corp., 97 Nev. 31, 623 P.2d 974 (1981) (explaining that, although NRCP 41(e) addresses the situation in which a cause of action is remanded for a new trial, a district court applies the same three-year limit for bringing an action to trial in the first instance after remand).

bringing matters to trial in the first instance.⁴ Accordingly, Jackson's argument that the dismissals were improperly based on a "technicality" is unavailing.

A. Plaintiff's obligation to act diligently

Jackson blames the district court, respondents, and their counsel for her cases not being brought to trial within NRCP 41(e)'s prescriptive time frames. Her arguments, however, lack merit. As the plaintiff, Jackson's duty was to act diligently at every stage of the proceedings to expedite her cases to a final determination.⁵ As this court has explained, it is incumbent upon the plaintiff to "carefully track the crucial procedural dates and . . . actively advance the case at all stages."⁶ Plaintiffs must "take initiative and prod the district court when the case sits dormant."⁷

Instead of bringing her actions to trial, however, Jackson delayed the proceedings by filing numerous motions to disqualify the district court judges who were assigned to hear her cases,⁸ as well as other

⁴See Morgan v. Las Vegas Sands, Inc., 118 Nev. 315, 320, 43 P.3d 1036, 1039 (2002) (explaining that dismissal under NRCP 41(e) is mandatory if a plaintiff fails to bring her action to trial within five years after filing her complaint).

⁵Thran v. District Court, 79 Nev. 176, 181, 380 P.2d 297, 300 (1963); Johnson v. Harber, 94 Nev. 524, 527, 582 P.2d 800, 801 (1978).

⁶Allyn v. McDonald, 117 Nev. 907, 912, 34 P.3d 584, 587 (2001).

⁷Id.

⁸The record indicates that Judges Denton, Sobel, Earl, Douglas, Vega, Huffaker, Cherry, Leavitt, Saitta, Gates, Porter, Mosley, McGroarty, Bonaventure, Lehman, Togliatti, Wall, Parraguirre, Walsh, Hardcastle,
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motions and documents that resulted in unnecessary delays.⁹ Although Jackson filed a motion for “Setting Civil Jury Trial” in both cases on March 17, 2004, she nevertheless continued to stall the progress of her cases. In particular, at the time when Jackson requested a trial date, Case No. A357614 was assigned to Judge Cory, whom Jackson already had moved to disqualify. And, one week after requesting a trial date, Jackson filed a another motion for “Disqualification of Judge Adair, Judge Bell, Judge Cory, Judge Huffaker, Judge Saitta, Judge Wall, Judge Walsh, Etc.” Thereafter, she moved to strike the case conference report, vacate the discovery scheduling order, and disqualify the discovery commissioner.

... continued

Glass, O'Brien, Bell, and Cory were all disqualified between April 2002 and June 2004, largely based on Jackson's affidavits of bias and prejudice, in which she challenged almost every district court department assignment made in her cases. And even after the NRCP 41(e)'s prescriptive periods had expired, but before a decision was rendered on respondents' motions to dismiss, Jackson moved to disqualify Senior Judge Manoukian.

⁹For instance, Jackson filed in these cases, among many others, motions: (1) to “Strike Early Case Conference Report”; (2) to “Vacate Commissioner Bigg[a]r's Discovery Schedule Order,” which was arguably favorable to her in that it recommended extending the discovery deadline; (3) for “dismissal of criminal code violations,” which appear unrelated to the civil rights and tort claims set forth in her complaints; (4) to disbar several of respondents' attorneys; (5) alleging “continuous fraud” by respondents' attorneys and district court judges; (6) for “restraining order and a hearing due to defendants' [attorney's] continuous perjury”; (7) for “continuous tort rule”; and (7) alleging “unconstitutional misconduct” by the district court clerk.

Additionally, Jackson failed to engage in any meaningful discovery during the approximately eight years that elapsed between the time when she filed her complaints until they were ultimately dismissed. Indeed, the June 2002 early case conference took place at respondent Clark County School District's request, and Jackson not only objected to the proceeding, she also failed to produce any documents at the conference. She subsequently filed pleadings in which she alleged that the conference had been a "fraud" and that respondents had "kidnapped" and "murdered" her.

It also appears that Jackson did not serve any document requests on respondents until June 7, 2004, forty-six days before the NRCP 41(e) three-year deadline in case No. A357614, and approximately two-and-a-half years after the five-year deadline in Case No. A366925. Apparently, no depositions had been noticed or taken in either case, despite the fact that Jackson had named thirty individual defendants in both of her amended complaints, together, in which she had alleged twenty-one causes of action (four in Case No. A357614 and seventeen in Case No. A366925). Accordingly, even though Jackson requested a trial date approximately four months before NRCP 41(e)'s three-year period expired for case No. A357614, with all of the pending motions and lack of discovery, it was not possible to proceed with trial within that time frame.

B. Jackson's allegations of wrongdoing

Finally, there is nothing in the record to suggest any fraud, malice, or collusion on behalf of respondents, their attorneys, or the district court judges, or that the actions of anyone other than Jackson resulted in any delayed proceedings in the district court.


Conclusion

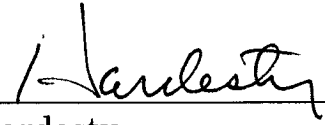
As noted above, the remittitur in Case No. A357614 was filed with the district court on July 23, 2001, and therefore, Jackson was required to bring that case to trial by July 23, 2004. She failed to do so. As to Case No. A366925, Jackson filed her complaint on November 25, 1996, and therefore, she was required to bring that case to trial by November 21, 2001. She did not do so. Thus, we conclude that the district court properly determined, in both cases, that Jackson's failure to pursue her actions against respondents within NRCP 41(e)'s prescriptive period mandated dismissal.¹⁰ Accordingly, we affirm the district court's order.¹¹

¹⁰While the district court concluded that both cases were subject to dismissal under NRCP 41(e)'s provision requiring a case to be brought to trial within three years following remand, Case No. A366925 was not subject the three-year rule, since Jackson's earlier appeal in that case was dismissed for lack of jurisdiction and, therefore, this court did not remand the matter for trial. Nevertheless, the district court did not err by dismissing Case No. A366925 because that matter had exceeded NRCP 41(e)'s five-year want-of-prosecution provision, mandating dismissal under that portion of the rule. See *Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (stating that "this court will affirm the order of the district court if it reached the correct result, albeit for different reasons").

¹¹Although Jackson asserts that the district court was required to rule on her outstanding motions before dismissing her cases, the district court properly denied as moot all remaining pending motions when it dismissed Jackson's cases. See *Northern Ill. Corp. v. Miller*, 78 Nev. 213, 370 P.2d 955 (1962) (explaining that, when a case has been long neglected and no adequate excuse is offered for the delay in bringing it to trial, an inference arises that the case lacks merit, and discretionary dismissal under NRCP 41(e) is proper, even if the plaintiff had requested a setting for trial); *Erickson v. One Thirty-Three, Inc.*, 104 Nev. 755, 757, 766 P.2d 898, 899-900 (1988) (recognizing that, when a case is not brought to trial within NRCP 41(e)'s prescriptive period, dismissal is mandatory).

It is so ORDERED.¹²


_____, C.J.
Maupin


_____, J.
Hardesty

cc: Chief Judge, Eighth Judicial District
Hon. Noel E. Manoukian, Senior Judge
Jo Ann Jackson
Carrie S. Bourdeau
Freeman Law Firm
Lewis Brisbois Bisgaard & Smith, LLP
Eighth District Court Clerk

¹²Although Jackson has not been granted leave to file documents in proper person, see NRAP 46(b), we have considered the document, provisionally received in this court on April 10, 2006, in which she asserted that she was suffering from “Legal Abuse Syndrome,” explaining that this court is “bombarding” her with documents, amounting to “intentional infliction of emotional distress,” and “equivalent to premeditated Murder!” In light of this order, and because this court has only entered orders in response to documents that Jackson has submitted to this court, we deny any relief requested in her April 10, 2006 document.