IN THE SUPREME COURT OF THE STATE OF NEVADA

WALTER RAINEY, BY AND THROUGH HIS GUARDIAN, MARK C. RAINEY,
Appellant,
vs.
CARSON CITY CONSOLIDATED CITY-COUNTY GOVERNMENT, RISK MANAGEMENT DEPARTMENT, FACILITIES MAINTENANCE DIVISION, CARSON CITY PARKS & RECREATION,
Respondents.

No. 45215

FILED

MAR 27 2006

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

ORDER OF AFFIRMANCE

This proper person appeal challenges a district court order dismissing appellant's personal injury action for want of prosecution under NRCP 41(e). First Judicial District Court, Carson City; Michael R. Griffin, Judge.

On March 23, 2000, appellant Walter Rainey, in proper person, filed a complaint in the district court against Carson City governmental respondents, alleging personal injury claims arising from a March 1998 slip-and-fall incident. The matter was submitted to mandatory non-binding court-annexed arbitration, and an arbitration decision was later rendered. Thereafter, on September 5, 2001, the court granted Rainey's request for a trial de novo.

Rainey, however, failed to take any further action to bring his case to trial, and on March 24, 2005, respondents moved to dismiss the case for want of prosecution under NRCP 41(e), which mandates that an action be brought to trial within five years of its filing date. Respondents noted that they had not stipulated to extend the five-year time period.

Rainey's guardian filed an opposition to the dismissal motion, asserting that Rainey had suffered a severe stroke in November 2001, which was related to his 1998 injuries and caused permanent memory loss and paralysis to the left side of his body. As a result, the guardian alleged, Rainey, who was the only person knowledgeable of the case's status and his obligations thereunder, was unable to remember that the trial de novo remained pending. Accordingly, Rainey's guardian requested that the district court exercise discretion by not dismissing the case, or alternatively, dismissing the case without prejudice.

The district court, however, dismissed the case with prejudice, and this appeal followed.

Involuntary dismissal under NRCP 41(e) is mandatory; the district court thus had no discretion in dismissing Rainey's case for Rainey's failure to bring his case to trial within that rule's time limits, even if his failure to prosecute was due to unfortunate circumstances that were not his fault.[1] Further, the court's decision to dismiss the case with prejudice does not constitute an abuse of discretion, since the statute of

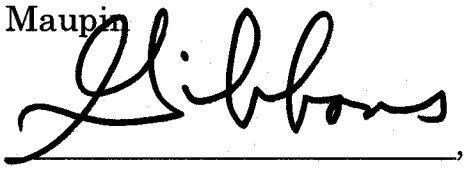
---

[1]Rickard v. Montgomery Ward & Co., 120 Nev. 493, 496, 497-98, 96 P.3d 743, 746, 747 (2004) (noting that involuntary dismissals under NRCP 41(e) are mandatory, but extending the five-year time period under narrow circumstances, when the delay was caused by the opposing party's bankruptcy stay); Morgan v. Las Vegas Sands, Inc., 118 Nev. 315, 320, 43 P.3d 1036, 1039 (2002) (noting that the district court must dismiss an action that has been pending for over five years from the date of filing without prosecution, even though that matter had been submitted to court-annexed arbitration); Allyn v. McDonald, 117 Nev. 907, 912, 34 P.3d 584, 587 (2001) ("As we observed, 'the exercise of discretion is not involved,' and NRCP 41(e) 'does not contemplate an examination of the equities.'" (quoting Johnson v. Harber, 94 Nev. 524, 526, 582 P.2d 800, 801 (1978) (internal citations omitted))).

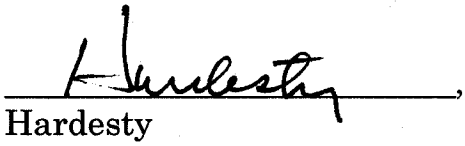
limitations for bringing a new action based on Rainey's injuries and any oral statements made at the time of those injuries had expired.[2] Finally, we note that, once the district court granted appellant's request for a trial de novo, the court was not able to revive the arbitration award.[3] Accordingly, we affirm the district court's order.

It is so ORDERED.[4]

_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

cc: Hon. Michael R. Griffin, District Judge
Mark C. Rainey
Carson City District Attorney
Carson City Clerk

---

[2]See NRS 11.190(2)(c) (providing a four-year time limit for actions based on obligations and liabilities arising from oral representations) and (4)(e) (providing a two-year time limit for actions based on personal injuries caused by wrongful acts or neglect).

[3]Morgan, 118 Nev. at 322, 43 P.3d at 1040-41.

[4]Although appellant was not directed to file a docketing statement, see NRAP 46(b), we have received his proper person docketing statement.