

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH KRUSE,
Appellant,

vs.

REBECCA MARR; KATHY JENSEN, PH.D.,
AN INDIVIDUAL; AND CORRECTIONAL
MEDICAL SERVICES, INC., A MISSOURI
CORPORATION,
Respondents.

No. 46637

FILED

JAN 31 2007

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

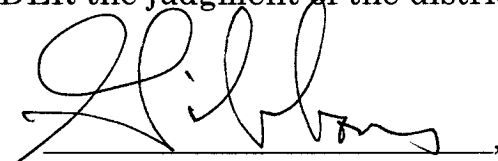
ORDER OF AFFIRMANCE

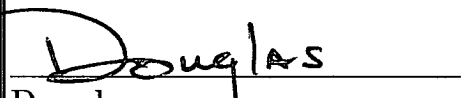

This is a proper person appeal from a district court order dismissing a complaint for want of prosecution. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Appellant Kenneth Kruse filed a complaint against Correctional Medical Services and medical personnel in the Nevada State Prison on October 25, 1999. In 2002, respondents filed a motion for a stay, which the district court denied until they provided additional documentation. Respondents subsequently withdrew their request for a stay. In September 2002, Kruse was transferred to the California Department of Corrections. He was released in 2003, but he was returned to the California Department of Corrections in May of 2004. From September 2002 to April 2005, no documents indicating any progress in Kruse's case were filed except notices of address changes. In 2005, respondents filed a motion to dismiss for lack of prosecution under NRCP 41(e), which the district court granted.

Kruse contends that (1) a stay in the case was in effect;¹ and (2) while in the custody of the California Department of Corrections, he could not access the Nevada Rules of Civil Procedure; therefore, that time should not count toward the five-year period articulated in NRCP 41(e). These contentions have no merit. The documents in the case make clear that no stay was in effect. Not only did the district court deny the original motion, but the motion was subsequently withdrawn. Also, dismissal under Rule 41(e) is mandatory if a case is not brought to trial within five years. There is no provision for tolling the time depending on the circumstances of the litigant. Furthermore, it appears that appellant had many opportunities to access the Nevada Rules of Civil Procedure while he was not in the custody of the California Department of Corrections. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Gibbons


_____, J. 
Douglas Shearing, Sr. J.

¹See Boren v. City of North Las Vegas, 98 Nev. 5, 638 P.3d 404 (1982) (concluding that NRCP 41(e)'s five-year period for bringing a case to trial is tolled when a court order stays the proceedings).

²The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under a general order of assignment entered on January 10, 2007.

cc: Hon. Steve L. Dobrescu, District Judge
Kenneth Kruse
Maupin, Cox & LeGoy
White Pine County Clerk