

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK J. GEURTS AND ROBERT
J. ARNDELL,
Appellants,

vs.

LYON COUNTY BOARD OF
COMMISSIONERS, IN THEIR
OFFICIAL CAPACITY AS
TRUSTEES FOR THE SILVER
SPRINGS GENERAL
IMPROVEMENT DISTRICT,
Respondent.

No. 47780

FILED

JUN 22 2007

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

ORDER AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

This is a proper person appeal from a district court order, entered on remand, dismissing a petition for a writ of mandamus and prohibition under NRCP 41(e). Third Judicial District Court, Lyon County; David A. Huff, Judge.

The district court dismissed the case below because the proceedings were not brought to trial within three years after the remittitur was issued following the reversal and remand by this court.¹ We affirm the district court's order to the extent that it dismissed the case,

¹See Geurts v. Lyon County Commissioners, Docket No. 37216 (Order of Reversal and Remand, November 7, 2002).

but to the extent that the dismissal was with prejudice, we conclude that the district court abused its discretion.

The district court dismissed with prejudice the proceedings based on NRCP 41(e), which requires the dismissal of any action that is not brought to trial within three years after remand from the Nevada Supreme Court. Appellants cite United Ass'n of Journeymen v. Manson² as authority to escape the mandatory directive of this rule because they filed a motion for summary judgment in the district court before the three-year period expired. However, this is of no assistance to the appellants because their motion for summary judgment was not granted. As this court explained in Union Ass'n of Journeymen, a motion for summary judgment filed before the expiration of a NRCP 41(e) time limitation will be considered bringing a case to trial within the time limit only if the summary judgment motion is subsequently granted.³ Since the appellants' motion for summary judgment was not granted, this case was not brought to trial within the three-year time period.

The appellants also contend that even if the district court was required to dismiss this case, it should have dismissed the proceedings without prejudice rather than with prejudice. This court has stated that an action dismissed pursuant to NRCP 41(e) should be dismissed without

²105 Nev. 816, 783 P.2d 955 (1989).

³United Ass'n of Journeymen v. Mason, 105 Nev. at 819-20, 783 P.2d at 956-57.

prejudice when justice requires.⁴ And in determining whether dismissal should be with or without prejudice, we have recognized three factors that should be considered: (1) was there adequate cause for the delay in bringing the case to trial; (2) whether the merits strongly favor the appellants; and (3) whether subsequent proceedings are not barred by the statute of limitations.⁵

Here, this case was pending for less than a year before it was improperly dismissed by the district court. On remand, the appellants had three years to bring the case to trial rather than the five years they would have had if an appeal was not required. The issues had not ripened within the three years, and we have previously held that this is a valid reason to dismiss an action without prejudice.⁶ We also note that numerous motions were pending for many months before they were decided, and counter motions for summary judgment were pending when the case was dismissed a second time. There were adequate reasons for the delay in this case for which the appellants were not responsible.

It is difficult to determine whether the merits of the case strongly favor the appellants because some issues were not fully developed below and the district court did not rule on most of the substantive issues

⁴Id. at 821, 783 P.2d at 958.

⁵Home Sav. Ass'n v. Aetna Cas. & Surety, 109 Nev. 558, 565-566, 854 P.2d 851, 855-56 (1993).

⁶See id. at 564-65, 854 P.2d at 854-55.

presented. However, this court's previous order favored the appellants,⁷ and it appears that at least one required notice to property owners in the District was not given. It does seem as if the appellants are making at least one valid point.

While the determination of whether a subsequent action is barred may well hinge on subsequent factual determinations, the assessments or charges made by the District are ongoing and recent assessments should not be barred by the statute of limitations. While this determination will probably be made if subsequent proceedings are filed, it does appear that some claims will not be barred by any statute of limitations. When we consider these three factors and the fact that the issues did not fully ripen during the three years after remand, we conclude that the district court abused its discretion in dismissing this case with prejudice.

In the event the appellants attempt to pursue these issues at a subsequent time, we make two observations. The first is that the filing of a petition for a writ of prohibition or mandate is not appropriate when there exists an adequate remedy at law.⁸ Second, the respondents asserted in their motion for summary judgment that the appellants were not property owners of record when the District was formed and after that time, and therefore do not have standing to assert the claims that are

⁷See Geurts v. Lyon County Commissioners, Docket No. 37216, (Order of Reversal and Remand, November 7, 2002).

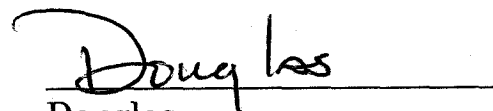
⁸See NRS 34.330; NRS 34.170.

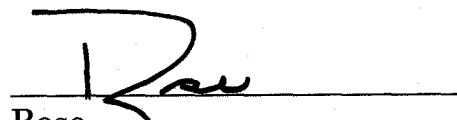
contained in the writ petition. Appellants countered that they owned the property with another who apparently was an owner of record and that the appellants lived in the District at all relevant times. The district court did not decide this issue before dismissing the case, but it will certainly be raised if further proceedings are pursued, and it may preclude the appellants from proceeding further.

For the reasons stated, we affirm the dismissal of this action by the district court, but we reverse the district court's order to the extent that the dismissal was with prejudice, and we remand this matter to the district court to modify its order accordingly.

It is so ORDERED.⁹


Gibbons J.


Douglas J.


Rose Sr.J.

⁹All remaining issues raised by appellants are without merit.

The Honorable Robert E. Rose, Senior Justice, participated in the decision of this matter under a general order of assignment entered on January 10, 2007.

cc: Hon. David A. Huff, District Judge
Robert J. Arndell
Patrick J. Geurts
Keith Loomis
Lyon County Clerk