

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICRIZ, LLC, A NEVADA LIMITED  
LIABILITY COMPANY, AND THE POWER  
COMPANY, INC., A NEVADA  
CORPORATION D/B/A CRAZY HORSE TOO,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK, AND THE  
HONORABLE ELIZABETH GOFF  
GONZALEZ, DISTRICT JUDGE,

Respondents,


and

JIM BARRIER D/B/A ALLSTATE AUTO AND  
MARINE, AND JES-JEN-ELI-JER  
CORPORATION, A NEVADA CORPORATION  
D/B/A BWF WRESTLING SCHOOL,  
Real Parties in Interest.

No. 51464

**FILED**

FEB 05 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER GRANTING PETITION FOR A WRIT OF MANDAMUS

This is an original petition for a writ of mandamus or prohibition challenging district court orders reinstating a case and granting a prejudgment writ of attachment in a contract action.

Petitioners contend that the district court is required by the five-year rule of NRCP 41(e) to dismiss the underlying complaint that was filed on June 19, 2002. On July 11, 2008, this court directed real parties in interest, on behalf of respondents, to provide an answer, but when no answer was filed within the permitted time frame, this court entered an order on September 30, 2008, submitting this writ petition for decision.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or

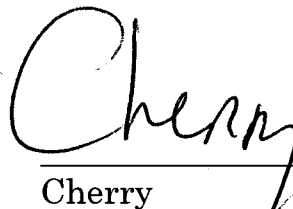
station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion, Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the court's jurisdiction. NRS 34.320. Both writs are extraordinary remedies addressed to the sound discretion of this court. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).


Having reviewed the petition and its supporting documents, and given the lack of opposition by the real parties in interest, we grant the petition for a writ of mandamus. Initially, we note that the district court's oral dismissal of the case on May 1, 2007, was ineffective, as no written dismissal order was entered. See State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 453, 92 P.3d 1239, 1245 (2004) (holding that dispositional court orders that deal with the merits of the case must be written, signed, and filed before they become effective). Consequently, the underlying case was still active when the five-year prescriptive period expired on June 19, 2007, and the district court's June 21, 2007, stay order was entered too late to toll the five-year period. NRAP 41(e); Erickson v. One Thirty-Three, Inc., 104 Nev. 755, 757, 766 P.2d 898, 899-900 (1988); Thran v. District Court, 79 Nev. 176, 380 P.2d 297 (1963).


It is the plaintiff's obligation to ensure compliance with the five-year rule. Morgan v. Las Vegas Sands, Inc., 118 Nev. 315, 321, 43 P.3d 1036, 1040 (2002). As the parties did not stipulate to an extension of the five-year rule, the district court was required to dismiss the action under NRCP 41(e)'s clear mandate. See, e.g., Johnson v. Harber, 94 Nev. 524, 527, 582 P.2d 800, 801 (1978) (affirming the dismissal of an action after the district court, sua sponte, reset the trial date beyond the five-

year prescriptive period, without objection by the plaintiff). Accordingly, we grant the petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its August 27, 2007, order reinstating Eighth Judicial District Court Case No. A452269, to dismiss Case No. A452269, and to discharge the prejudgment writ of attachment entered on June 27, 2006.

It is so ORDERED.<sup>1</sup>

 \_\_\_\_\_, J.  
Cherry

 \_\_\_\_\_, J.  
Saitta

 \_\_\_\_\_, J.  
Gibbons

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Patti, Sgro & Lewis  
Flangas McMillan Law Group, Inc.  
Eighth District Court Clerk

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<sup>1</sup>In light of this order, petitioners' alternative request for a writ of prohibition is denied.