IN THE SUPREME COURT OF THE STATE OF NEVADA

MCCURDY TRUCKING; AND DELORES MCCURDY, AN INDIVIDUAL,
Appellants,
vs.
YELLOW CHECKER STAR CAB CO. AKA AND/OR D/B/A YELLOW CHECKER STAR TRANSPORTATION; NEVADA YELLOW CAB CORPORATION, A NEVADA CORPORATION; AND NEVADA CHECKER CAB CORPORATION, A NEVADA CORPORATION,
Respondents.

No. 53951

FILED
JUN 09 2011
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court dismissal of a tort action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Upon consideration of the parties' briefs and the record on appeal, we conclude that the district court did not err by dismissing appellants' action pursuant to NRCP 41(e) because appellants failed to bring the case to trial within five years of filing the complaint. See Monroe v. Columbia Sunrise Hosp., 123 Nev. 96, 99-100, 158 P.3d 1008, 1010 (2007) (explaining that dismissal under NRCP 41(e) is mandatory when the action is not brought to trial within five years and that the rule does not permit the court to examine the equities of dismissal). With regard to the district court's grant of partial summary judgment to respondents, the district court granted summary judgment only as to the issue of punitive damages. The court did not find that there were no

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triable issues of fact or determine the rights of the parties by applying the law to the facts, and thus, the summary judgment did not amount to bringing the case to trial for the purposes of NRCP 41(e). See Monroe, 123 Nev. at 100, 158 P.3d at 1010; see also Allyn v. McDonald, 117 Nev. 907, 910, 34 P.3d 584, 586 (2001) (concluding that a case was not brought to trial when the district court granted partial dismissal, as "NRCP 41(e) requires that the 'action'—not just an issue—be brought to trial within the [applicable] period"). Additionally, the setting of trial dates and argument of pretrial motions in this case did not reach the point of bringing the action to trial, as the trial dates were continued prior to the commencement of a trial and there was no indication in the record that appellants appeared for a trial or examined jurors. Cf. Smith v. Timm, 96 Nev. 197, 200, 606 P.2d 530, 531 (1980) (deeming a case brought to trial within the meaning of NRCP 41(e) because the plaintiffs had obtained a trial date, appeared for trial in good faith, argued motions, and examined jurors).

We also reject appellants' argument that the district court should have applied NRCP 41(e)'s three-year period for bringing a case to trial after a new trial is granted on appeal. Appellants have not previously appealed this action, and this court's order granting a writ of mandamus did not trigger the three-year period. See Monroe, 123 Nev. at 102, 158 P.3d at 1012 (holding that the three-year extension does not apply to a grant of a petition for a writ of mandamus.) Finally, regardless of the district court's failure to hold further summary judgment proceedings pursuant to this court's writ of mandamus, the district court was required by NRCP 41(e) to dismiss the action, given that appellants had not brought the case to trial within the five-year period. See Allyn,

117 Nev. at 911, 34 P.3d at 586-87 (rejecting appellant's argument that the district court erred by dismissing an action because the court's erroneous ruling caused the delay that pushed the proceedings beyond the prescribed time period).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_______________, J.
Cherry

_______________, J.
Gibbons

_______________, J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
M. Nelson Segel, Settlement Judge
Ronald A. Colquitt
Bailus Cook & Kelesis
Eighth District Court Clerk