

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAND TITLE OF NEVADA,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT OF  
THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK; AND THE  
HONORABLE JESSIE WALSH,  
DISTRICT JUDGE,

Respondents,  
and

CARLA FARROW AND MICHAEL  
MARESCH,  
Real Parties in Interest.

No. 56671

**FILED**

NOV 10 2010

TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order that, among other things, denied petitioner's motion to dismiss the underlying action in its entirety under NRCP 41.<sup>1</sup>

On August 12, 2005, petitioner Land Title of Nevada filed a complaint in district court against real party in interest Michael Maresch. Subsequently, after the district court granted real party in interest Carla Farrow leave to intervene in the underlying matter, Farrow filed a complaint in intervention on March 24, 2006. Thereafter, on August 19, 2010, Land Title filed a motion to dismiss the entire action under NRCP 41(e) for failing to bring the matter to trial within five years. After further

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<sup>1</sup>Because petitioner seeks to compel dismissal of the underlying district court case rather than prevent the district court from exceeding its jurisdiction, we elect to construe the petition for a writ of prohibition as a petition for a writ of mandamus. See City of Sparks v. District Court, 112 Nev. 952, 953 n.1, 920 P.3d 1014, 1015 n.1 (1996) (construing a petition for a writ of prohibition as one for mandamus when mandamus was the appropriate remedy).


briefing, the district court ultimately entered an order that dismissed the complaint filed by Land Title under NRCP 41(e) but declined to dismiss Farrow's complaint in intervention, determining that the complaint in intervention was a separate action and that the NRCP 41(e) five-year period had not run. On August 26, 2010, this court entered an order granting a temporary stay of all proceedings in the underlying action.

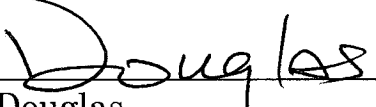
In its petition, Land Title argues that the district court was required to dismiss Farrow's complaint in intervention, as the complaint in intervention is part of the "action" initiated by its original August 2005 complaint. Farrow has filed an answer, as directed, and argues that the complaint in intervention is independent of Land Title's complaint as she was not an original party to the complaint and that dismissing her complaint in intervention would run contrary to public policy by resulting in a disposition of her complaint in intervention not on the merits.

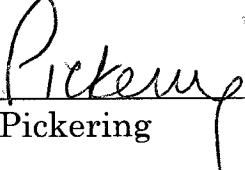
Having reviewed the petition, the answer, and the supporting documentation, we agree with Land Title that the district court was required, under NRCP 41(e), to dismiss Farrow's complaint in intervention. In United Ass'n of Journeymen v. Manson, 105 Nev. 816, 818, 783 P.2d 955, 956 (1989), this court addressed a similar issue when a plaintiff filed a complaint against a defendant in April 1983, and the defendant subsequently filed a third-party complaint against two individuals not parties to the original lawsuit in August 1983. Thereafter, in July 1988, the third-party defendants moved the district court to dismiss the claims against them because they had not been brought to trial within five years of the date that the original complaint was filed. Id. at 818-19, 783 P.2d at 956. The district court granted the motion, even though five years had not passed since the third-party complaint was filed. Id. at 819, 783 P.2d at 956. On appeal, this court affirmed this dismissal, explaining that NRCP 41(e) refers to an "action," as opposed to a "claim,"

and that the filing of the complaint initiated the “action,” which necessarily includes “the original claim and any cross claims, counterclaims and third party claims.” Manson, 105 Nev. at 820, 783 P.2d at 957-58. Thus, under Manson, Farrow’s complaint in intervention is deemed part of the “action” initiated by Land Title’s original complaint. Id. Accordingly, the district court was required to dismiss Farrow’s complaint in intervention when it dismissed the original complaint pursuant to NRCP 41(e) because the complaint in intervention was not brought to trial within five years of the date that the original complaint was filed. Accordingly, for the reasons set forth above, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate the portion of its order denying Land Title’s motion to dismiss and enter an order dismissing the complaint in intervention under NRCP 41(e)’s five-year rule.<sup>2</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Michael Maresch  
Law Offices of Leslie Mark Stovall  
R. Clay Hendrix, P.C.  
Eighth District Court Clerk

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<sup>2</sup>We vacate the stay of all proceedings in Eighth Judicial District Court Case No. A508492, entered by this court on August 26, 2010.