

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN GORDON, M.D., AN
INDIVIDUAL,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK; AND
THE HONORABLE DOUGLAS W.
HERNDON, DISTRICT JUDGE,
Respondents,
and
BARBARA SCHONIGER, AN INDIVIDUAL,
Real Party in Interest.

No. 58339

FILED

DEC 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingersoll*
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order denying a motion to dismiss in a medical malpractice action. Real party in interest has filed an answer as directed, and petitioner has filed a reply.

A writ of mandamus may be issued "to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station," International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008), if the petitioner does not have a plain,

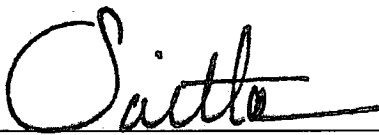
speedy, and adequate remedy at law.¹ NRS 34.160; NRS 34.170. Although this court will generally decline to consider writ petitions challenging district court orders denying motions to dismiss, if no factual dispute exists and the district court was obligated to dismiss the action pursuant to clear authority, we will consider such petitions. International Game Tech., 124 Nev. at 197-98, 179 P.3d at 558-59 (internal quotations omitted).


Having considered the petition, answer, and reply, we conclude as follows. Under NRCP 41(e), the district court is required to dismiss any action not brought to trial within five years after the complaint is filed, unless the parties execute a written stipulation extending the five-year period. 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). Here, there is no dispute that the five-year period elapsed without any written stipulation to extend the time to bring the case to trial. Real party in interest argues, however, that equitable estoppel and petitioner's role in extending the action beyond the deadline rendered the case inappropriate for dismissal. These arguments lack merit. See Monroe, 123 Nev. at 99-100, 158 P.3d at 1010 (explaining that plaintiffs have the duty to ensure that their case has been brought to trial within the five-year period and that the courts will not undertake an examination of the equities with regard to the running of the NRCP 41(e)

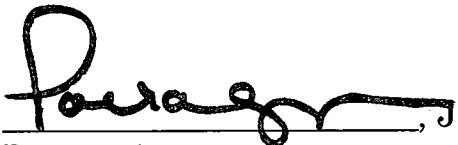
¹Because we conclude that a writ of mandamus is the appropriate form of relief, we deny petitioner's alternative request for a writ of prohibition.

period, even if plaintiffs are the victim of unfortunate circumstances). Accordingly, we conclude that the district court was required to dismiss the instant action for failure to bring the case to trial within NRCP 41(e)'s five-year period, and we therefore

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order denying the motion to dismiss and instead enter an order dismissing the underlying action.


_____, C.J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Douglas W. Herndon, District Judge
Raleigh & Hunt, P.C.
Christiansen Law Offices
Eighth District Court Clerk