

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES A. WHITE,
Appellant/Cross-Respondent,

vs.

NEWMONT USA LIMITED, D/B/A
NEWMONT MINING CORPORATION,
AND NEWMONT GOLD COMPANY,
Respondents/Cross-Appellants.

No. 59433

FILED

NOV 20 2013

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This in an appeal and cross-appeal from a district court order dismissing a wrongful termination action for want of prosecution under NRCP 41(e). First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant Charles White was employed by respondent Newmont USA Limited, d.b.a. Newmont Mining Corporation and Newmont Gold Company, when he was granted short-term disability benefits for a non-industrial back injury. He then filed a workers' compensation claim for the same injury. Upon receiving White's workers' compensation claim, Newmont terminated White because it believed White's claims for short-term disability and workers' compensation benefits were contradictory and fraudulent. On August 3, 2006, White filed a complaint in the district court alleging that Newmont wrongfully terminated him for filing a workers' compensation claim.

During the course of the litigation, Newmont filed a motion for summary judgment, which the district court granted in January 2009. White then filed a motion for reconsideration and a notice of appeal. After the district court informed this court that it was inclined to grant the

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motion for reconsideration, this court dismissed the appeal in July 2009 and remanded the matter to the district court for further proceedings. Upon reconsideration, the district court denied Newmont's summary judgment motion. The parties then set a trial date in March 2012; however, that date was beyond NRCP 41(e)'s five-year time limit for bringing a case to trial. On August 8, 2011, Newmont filed a motion for mandatory dismissal pursuant to NRCP 41(e) for want of prosecution, which the district court granted. White appeals and contends that the district court's grant of summary judgment in January 2009 constituted a "trial" under NRCP 41(e) such that the dismissal was not proper. White further argues that under the appeal exception to the five-year rule, he had three years from the date of remand to bring his case to trial.


NRCP 41(e) states that "[a]ny action heretofore or hereafter commenced shall be dismissed by the court . . . unless such action is brought to trial within 5 years after the plaintiff has filed the action." "Under NRCP 41(e), any action not brought to trial within five years 'shall be dismissed.' Dismissal is mandatory; NRCP 41(e) does not allow for examination of the equities of dismissal or protection of a plaintiff who is the victim of unfortunate circumstances." *Monroe v. Columbia Sunrise Hosp. & Med. Ctr.*, 123 Nev. 96, 99-100, 158 P.3d 1008, 1010 (2007).


We conclude that White's first contention is without merit. This court has held that the granting of a summary judgment motion constitutes bringing the case to trial because it requires a "finding that no triable issues of fact remain." *United Ass'n of Journeymen & Apprentices of the Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 820, 783 P.2d 955, 957 (1989). But, "[s]ince the denial of a motion for summary judgment merely involves a finding that there remain triable issues of

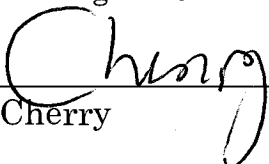
fact, it is not a trial.” *Id.* Here, although the district court initially granted Newmont’s motion for summary judgment, White moved for reconsideration and summary judgment was vacated. Thus, because the district court ultimately denied Newmont’s motion for summary judgment, the case was not “brought to trial” within five years of the filing of the action, and we conclude that the district court properly dismissed the action pursuant to NRCP 41(e).

We further conclude that White’s second contention is without merit. NRS 41(e) provides for an extension of the five-year time period when “an appeal has been taken and judgment reversed with cause remanded for a new trial.” In such instances, the case must be brought to trial within three years from the date that the remittitur is filed in district court by the clerk of the court. While this court has held that this extension provision applies not only to new trials but also to reversals of summary judgment orders, *see Monroe*, 123 Nev. at 102, 158 P.3d at 1012, White’s initial appeal filed in this court was dismissed. Additionally, no remittitur was issued, and thus the three-year extension does not apply. *See id.* (stating that “this three-year extension applies only to appeals following judgments, after this court issues the remittitur”). Accordingly, we affirm the district court’s dismissal of White’s action.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. James E. Wilson, District Judge
David Wasick, Settlement Judge
Diaz & Galt, LLC/Reno
William R. Kendall
Piscevich & Fenner
Carson City Clerk