

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES ANTHONY CLARK A/K/A
ANTHONY CLARK A/K/A TONY
CLARK, AN INDIVIDUAL; AND
SILVER STATE REAL ESTATE, LTD.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
WILLIAM D. KEPHART, DISTRICT
JUDGE,

Respondents,

and

JUSTIN GOODMAN, INDIVIDUALLY,
Real Party in Interest.

No. 73001

FILED

JUL 13 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS


This is an original petition for a writ of mandamus challenging a district court order denying a motion to dismiss the underlying negligence action pursuant to NRCP 41(e) for failure to bring the case to trial within five years.


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 or to control an arbitrary or capricious exercise of discretion. *See* NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Although this court generally will not consider writ petitions challenging orders denying motions to dismiss, we may consider such a petition if no factual dispute exists and the district court was obligated to dismiss the action pursuant to clear authority. *Int'l Game Tech.*, 124 Nev. at 197-98, 179 P.3d at 558-59.

17-90465

Having considered the petition and supporting documents, we conclude that the petition should be granted.¹ Here, the district court found that, although real party in interest failed to bring the underlying action to trial within five years, an equitable exception to NRCP 41(e) permitted the court to deny the motion to dismiss insofar as the court had been unable to provide a courtroom within the five-year deadline. The Nevada Supreme Court has made clear, however, that when an action is not brought to trial within five years, “[d]ismissal is mandatory[, and] 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.” See *Monroe v. Columbia Sunrise Hosp. & Med. Ctr.*, 123 Nev. 96, 99-100, 158 P.3d 1008, 1010 (2007). Because the district court was required by clear authority to dismiss the underlying action, we grant the petition and direct the clerk of the court to issue a writ of mandamus directing the district court to dismiss the underlying action pursuant to NRCP 41(e). See *Int’l Game Tech.*, 124 Nev. at 197-98, 179 P.3d at 558-59.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹On June 1, 2017, we directed real party in interest to file an answer to the petition, which was due in this court on June 21, 2017. Despite this order, no answer has been filed and real party in interest has not requested an extension of time to do so or otherwise responded to the directive contained in our June 1 order.

cc: Hon. William D. Kephart, District Judge
Schuetze & McGaha, P.C.
David Otto & Affiliates, PC
Eighth District Court Clerk