


IN THE SUPREME COURT OF THE STATE OF NEVADA

VANCE COAN,  
Appellant,  
vs.  
ROSALIE BACLET,  
Respondent.

No. 76430

FILED

JUL 16 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is a pro se appeal from a district court dismissing an action with prejudice under NRCP 41(e). Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.<sup>1</sup>

Respondent Rosalie Baclet filed a complaint against defendants Jeffrey Baclet, Joan Donner, and ADB Enterprises in May 2012, alleging fraud on the court, undue influence, and breach of fiduciary duty and constructive trust with respect to the distribution of property in a probate matter. Defendants filed counterclaims for breach of contract, fraud, and bad faith and unfair dealings. In December 2013, appellant Vance Coan moved to intervene in the action, claiming that he had a financial interest in the property that was the subject of the complaint and asserting claims against respondent. The district court granted his motion. In January 2018, the defendants filed a notice to set trial. Because the complaint had been filed over five years earlier, the district court entered an order to show

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<sup>1</sup>Having considered the pro se brief filed by appellant, we conclude that a response is not necessary, NRAP 46A(c), and that oral argument is not warranted, NRAP 34(f)(3). This appeal therefore has been decided based on the pro se brief and the record. *Id.*

cause regarding want of prosecution. Respondent asked the court to dismiss her complaint because the issues were moot or estopped, whereas the defendants and Coan argued that their claims should be allowed to proceed. Following a hearing on the show cause order, the district court entered an order dismissing the action with prejudice pursuant to NRCP 41(e).<sup>2</sup>

On appeal, Coan argues that the district court abused its discretion in dismissing the action *with* prejudice rather than *without* prejudice.<sup>3</sup> We disagree. The district court has broad discretion in determining whether dismissal should be with or without prejudice. *Monroe v. Columbia Sunrise Hosp. & Med. Ctr.*, 123 Nev. 96, 102-03, 158 P.3d 1008, 1012 (2007). Here, the district court specifically found that respondent's case lacked merit given her representation at oral argument that she filed the complaint to preserve her claims while the related probate matter was pending in another department, and that the court's rulings in the probate matter resolved the issues raised in her complaint and estopped defendants from bringing their counterclaims. The district court further found that the defendants failed to differentiate their counterclaims from the claims they had been estopped from bringing in the probate matter, and


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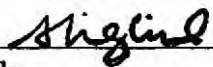
<sup>2</sup>The Nevada Rules of Civil Procedure were amended effective March 1, 2019. *In re Creating of a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedures, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, Dec. 31, 2018). Because this case predates the applicability of the amendments to the NRCP, we cite to the prior version of NRCP 41(e) effective at the time of this action.

<sup>3</sup>Coan also appears to argue that NRCP 41(e)'s five-year period should have been tolled during the pendency of an appeal in the related probate case. The rule's plain language does not support his contention that an appeal in a separate case tolls the five-year period in this case.

thus the entire action lacked merit to proceed. Coan does not address these findings in his informal brief or explain how his claims were not resolved in the probate matter. Thus, he has failed to demonstrate that the district court abused its discretion in dismissing the entire action with prejudice. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Kathleen M. Drakulich, District Judge  
Lansford W. Levitt, Settlement Judge  
Vance Coan  
Robertson, Johnson, Miller & Williamson  
Washoe District Court Clerk