IN THE SUPREME COURT OF THE STATE OF NEVADA

RAMONA TITMUS YORE, INDIVIDUALLY AND AS GUARDIAN AD LITEM OF S. T., A MINOR,
Appellant,
vs.
THE STATE OF NEVADA, DEPARTMENT OF CHILD AND FAMILY SERVICES,
Respondent.

No. 37721

FILED

NOV 0 5 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal by appellant Ramona Titmus Yore, as guardian ad litem of S. T., a minor, from a district court judgment dismissing her complaint against respondent the State of Nevada, Department of Child and Family Services, with prejudice for failure to bring her case to trial within five years pursuant NRCP 41(e).

NRCP 41(e) provides that a district court shall dismiss a case "unless such action is brought to trial within five years after the plaintiff has filed his [or her] action." We have consistently held that the language of NRCP 41(e) is clear and unambiguous, and dismissal of a case not brought to trial within five years is mandatory, regardless of the equities.[1] The five-year time period commences when the original complaint is filed.[2]

[1]Johnson v. Harber, 94 Nev. 524, 526, 582 P.2d 800, 801 (1978).

[2]Id. at 527, 582 P.2d at 801-02.

We have also stated that district courts have the discretion whether to dismiss a case pursuant to NRCP 41(e) with or without prejudice.[3]

Here, Yore filed her original complaint on November 29, 1995. It remains undisputed that trial had not commenced by November 29, 2000. Rather, the trial date was set for January 8, 2001. Yore has presented no compelling evidence that the State either expressly or implied waived the requirements of NRCP 41(e); therefore, we conclude that Yore's delay violated NRCP 41(e). We also conclude that Yore has not shown on appeal a good faith reason for her delay, or that her complaint has merit.[4] Therefore, we conclude that the district court acted within its discretion in dismissing Yore's complaint with prejudice.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Rose

_____, J.
Young

_____, J.
Agosti

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[3]Home Sav. Ass'n v. Aetna Cas. & Surety, 109 Nev. 558, 563, 854 P.2d 851, 854 (1993).

[4]See id.

[5]We have carefully considered Yore's constitutional challenge to NRCP 41(e) and conclude that it is without merit. See Lindauer v. Allen, 85 Nev. 430, 434-35, 456 P.2d 851, 854 (1969).

cc: Hon. Brent T. Adams, District Judge
David D. Loreman
Attorney General/Carson City
Washoe District Court Clerk