

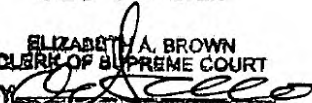
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK MILFORD PECK,  
Appellant,  
vs.  
THE STATE OF NEVADA; THE STATE  
OF NEVADA DEPARTMENT OF  
CORRECTIONS; AND JAMES  
DZURENDA,  
Respondents.

No. 84748-COA

FILED

DEC 12 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Frank Milford Peck appeals from a district court order dismissing a civil rights action. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Peck argues the district court erred by granting the respondents' motion to dismiss. The district court dismissed Peck's action for want of prosecution because he failed to bring it to trial within five years of filing the complaint. The district court also dismissed Peck's action for want of prosecution because he failed to bring it to trial within three years after the remittitur was filed in the trial court following this court's reversal of the district court's prior judgment in this matter.

A district court generally is required to dismiss an action for failure to prosecute if the plaintiff does not bring the matter to trial within five years after filing the complaint. *See* NRCP 41(e)(2)(B). However, "on remand from an erroneous judgment or dismissal entered before trial has

commenced that is reversed on appeal, the parties have three years from the date that the remittitur is filed in district court to bring the case to trial.” *Carstarphen v. Milsner*, 128 Nev. 55, 63, 270 P.3d 1251, 1256 (2012); *see also* NRCP 41(e)(4)(B) (“If a party appeals a judgment and the judgment is reversed on appeal and remanded for a new trial, the court must dismiss the action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the remittitur was filed in the trial court.”). Any period during which the parties are prevented from bringing a case to trial due to a stay order must be excluded when conducting an NRCP 41(e) computation. *Boren v. City of N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982). Moreover, NRCP 41(e)(5) provides that when a district-wide administrative order stays civil trials due to extraordinary circumstances, such as a pandemic, “the period of the stay . . . shall [not] be counted in computing the time periods under this section.” We review decisions made under the Nevada Rules of Civil Procedure de novo. *See Power Co. v. Henry*, 130 Nev. 182, 186, 321 P.3d 858, 860-61 (2014).

This court previously reversed the district court’s erroneous decision to dismiss Peck’s complaint, *Peck v. State*, No. 75179-COA, 2018 WL 6433084 (Nev. Ct. App. Dec. 5, 2018) (Order of Reversal and Remand), and the remittitur was filed in the district court on January 8, 2019. Because the filing of the remittitur after the reversal of an erroneous decision to dismiss Peck’s complaint provided Peck a longer time period to bring this matter to trial, the district court should have used the January 8, 2019, filing date to calculate Peck’s time to bring this matter to trial, *see Bell & Gossett Co. v. Oak Grove Inv’rs*, 108 Nev. 958, 961-62, 843 P.2d 351,

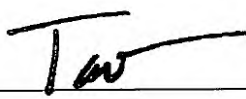
353 (1992) (indicating that the commencement of the new three-year period begins after the remittitur is filed with the district court), and the district court should not have utilized the five-year date from the filing of Peck's complaint on September 22, 2016, when computing his time to bring this matter to trial. *See* NRCP 41(e)(5) (stating that “[i]f two time periods requiring mandatory dismissal apply, the longer time period controls”).

In addition, due to the COVID-19 pandemic, the Chief Judge of the Eighth Judicial District Court issued administrative orders staying trials in civil matters for purposes of NRCP 41(e) from March 16, 2020, to July 1, 2021. Eighth Judicial District Court Administrative Order 20-01 (March 13, 2020); Eighth Judicial District Court Administrative Order 21-04 (June 4, 2021). The administrative orders stayed civil trials for purposes of NRCP 41(e) for 472 days.

The district court concluded that Peck did not timely bring this matter to trial because his three-year deadline passed on January 8, 2022. However, as provided for by NRCP 41(e)(5), the district court should have excluded the time period of the stay when it computed the time that Peck had to bring his case to trial. The district court thus erred by failing to account for the administrative order staying civil trials when it considered whether Peck's complaint should be dismissed for failure to prosecute pursuant to NRCP 41(e). Therefore, we conclude that the district court erred by dismissing Peck's complaint. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>1</sup>

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Nadia Krall, District Judge  
Frank Milford Peck  
Attorney General/Carson City  
Eighth District Court Clerk

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<sup>1</sup>Although this court generally will not grant a pro se appellant relief without first providing respondents an opportunity to file a response, the filing of a response would not aid this court's resolution of this case and, thus, has not been ordered. See NRAP 46A(c); see also NRAP 34(f)(3).