

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMAA ANTHONY CINQUE,
Appellant,
vs.
THE STATE OF NEVADA; DWAYNE
DEAL; AND NEVADA DEPARTMENT
OF CORRECTIONS,
Respondents.

No. 89863-COA

FILED

JAN 20 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jamaa Anthony Cinque appeals from a district court order dismissing his case under NRCP 41(e)'s five-year rule. First Judicial District Court, Carson City; James E. Wilson, Senior Judge.

Cinque filed his complaint on October 11, 2018, alleging a violation of his civil rights stemming from respondents' failure to apply statutory credits toward his minimum prison term. Respondents subsequently filed an answer to Cinque's complaint. The parties thereafter filed numerous motions and other documents in the district court. In addition, Cinque pursued an appeal that was dismissed by the Nevada Supreme Court. *See Cinque v. State*, No. 78941, 2019 WL 2725284 (Nev. Jun. 21, 2019) (Order Dismissing Appeal).

The matter was set for trial in November 2022, but Cinque failed to appear at a pretrial hearing and the district court thereafter issued an order vacating the trial. After Cinque submitted proof that he was unable to attend due to a family medical issue, the district court reset the trial for January 2024. Cinque again failed to appear at a pretrial hearing and subsequently filed a motion to continue trial, and the district court

thereafter set the trial for October 2024. Cinque did not appear at another pretrial hearing and he subsequently filed a motion stating he did not appear at the hearing because he and his spouse had recently undergone surgical procedures and a storm had knocked out power to his residence, all of which caused him confusion and to miss the court hearing.

The district court thereafter issued a written order dismissing this matter pursuant to NRCP 41(e)(2)(B) for want of prosecution. The court noted that Cinque filed his complaint in 2018, and despite this matter being repeatedly scheduled for trial, Cinque's repeated failure to appear at pretrial hearings and the resulting vacating of the trial dates meant that this matter had not been brought to trial within five years as required by NRCP 41(e)(2)(B). The district court accordingly dismissed this matter for want of prosecution. This appeal followed.

On appeal, Cinque challenges the district court's decision to dismiss this matter, arguing he is elderly, has limited resources, and has little knowledge of legal matters. We review de novo a district court's dismissal for failure to prosecute under NRCP 41(e)'s five-year rule. *The Power Co., Inc. v. Henry*, 130 Nev. 182, 186, 321 P.3d 858, 860-61 (2014); *Monroe v. Columbia Sunrise Hosp. & Med. Ctr.*, 123 Nev. 96, 99, 158 P.3d 1008, 1010 (2007) (stating "[b]ecause application of NRCP 41(e) is an issue of law, we review" arguments concerning application of NRCP 41(e) de novo). Generally, the district court must dismiss an action for want of prosecution when "a plaintiff fails to bring the action to trial within 5 years after [it] was filed." NRCP 41(e)(2)(B). NRCP 41(e)'s five-year rule "is clear and unambiguous and requires no construction other than its own language." *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 131 Nev. 865, 872, 358 P.3d 925, 929 (2015) (internal quotation marks omitted). Under the

five-year rule, “where a case has not been brought to trial after five years, dismissal is mandatory, affording the district court no discretion.” *Id.* It is the plaintiff’s obligation to ensure compliance with NRCP 41(e)’s five-year rule, *Morgan v. Las Vegas Sands, Inc.*, 118 Nev. 315, 321, 43 P.3d 1036, 1040 (2002), 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,” *Monroe*, 123 Nev. at 99-100, 158 P.3d at 1010.

We conclude Cinque fails to demonstrate the district court erroneously dismissed this matter under NRCP 41(e)’s five year rule. Cinque’s contentions regarding his age, limited resources, and lack of legal knowledge were insufficient to excuse the district court’s mandatory duty to dismiss this matter under NRCP 41(e)’s five-year rule. *See id.*; *see also Johnson v. Harber*, 94 Nev. 524, 526, 582 P.2d 800, 801 (1978) (“Although appellant appears to be the victim of unfortunate circumstances, [the supreme court] has consistently held that dismissal pursuant to NRCP 41(e) for failure to bring to trial a claim within five years of filing the complaint is mandatory.”). Cinque’s contentions do not fall into one of the limited “exceptions to the mandatory nature of NRCP 41(e),” such as the entry of a stay order, *D.R. Horton, Inc.*, 131 Nev. at 872, 358 P.3d at 930, or a stipulation to extend the five-year period, *Prostack v. Lowden*, 96 Nev. 230, 231, 606 P.2d 1099, 1099-1100 (1980).¹ In light of the foregoing, we conclude

¹Cinque does not assert he was prevented from bringing this action to trial by reason of a stay order, *cf. Boren v. City of N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982) (“Any period during which the parties are prevented from bringing an action to trial by reason of a stay order shall not be computed in determining the five-year period of Rule 41(e).”), and he has thus forfeited any argument related to the same, *see Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues an appellant does not raise on appeal are forfeited).

the district court did not err by dismissing this matter pursuant to NRCP 41(e)(2)(B). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. James E. Wilson, Senior Judge
Hon. Kristin Luis, District Judge
Jamaa Anthony Cinque
Attorney General/Carson City
Carson City Clerk

²Insofar as Cinque raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.