



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK ANTHONY MACIAS,
Appellant,
vs.
THE STATE OF NEVADA;
DEPARTMENT OF CORRECTIONS;
TIMOTHY FILSON, WARDEN;
KIRCHEN, SERGEANT; NED
SCHUERING, NURSE; CARPENTER,
MEDICAL COORDINATOR; AND
ROMEO ARANAS, MEDICAL
DIRECTOR,
Respondents.¹

No. 91721-COA

ORDER OF AFFIRMANCE

Frank Anthony Macias appeals from a district court order of dismissal in a civil rights action. Seventh Judicial District Court, White Pine County; Hon. Steve L. Dobrescu, Judge.

Macias was an inmate and filed a complaint against respondents Nevada Department of Corrections and various employees, including Warden Timothy Filson, Sergeant Kirchen, Nurse Ned Schuering, Medical Coordinator Carpenter, and Medical Director Romeo Aranas (collectively NDOC) on August 10, 2018, alleging violations of his Fifth, Eighth, and Fourteenth Amendment

¹We direct the clerk of this court to amend the caption on this court's docket to conform with the caption on this order.

rights under the United States Constitution based on being denied pain medication for a broken wrist. On December 11, 2018, NDOC filed a motion to dismiss the complaint, arguing Macias failed to state claims for relief. On December 31, Macias filed an opposition and within that opposition, a motion to grant judgment in his favor. His filing argued that he had successfully stated claims for relief and requested that the district court dismiss NDOC's motion and grant judgment in his favor. The district court denied the motion to dismiss on January 23, 2019, but did not expressly rule on Macias's request for judgment in his favor. NDOC filed an answer on May 13, 2019.

On May 30, 2025, NDOC filed a motion to dismiss for failure to bring the case to trial within five years pursuant to NRCP 41(e). NDOC argued that there had been no stipulation to extend the deadline, more than five years had passed since Macias had commenced the case, it had not been brought to trial within that time, and thus, the motion to dismiss should be granted. Macias filed a response opposing NDOC's motion, and arguing, among other things, that the COVID-19 pandemic tolled the time to bring the case to trial under NRCP 41(e). In reply, NDOC argued, even taking into account the COVID-19 pandemic tolling period, dismissal was still warranted for failure to bring the case to trial within five years. Thereafter, the district court granted the motion to dismiss, finding that Macias filed his complaint over five years ago, and had failed to bring the case to trial. Thus, the court found dismissal was warranted pursuant to NRCP 41(e).² This appeal follows.

²Macias does not raise any argument as to the COVID-19 pandemic tolling period on appeal. Thus, this court does not further address it.

On appeal, Macias argues that the district court erred in finding that he failed to prosecute his case because the court did not resolve his December 31 opposition and motion to grant judgment in his favor before the 5-year time frame under NRCP 41(e) expired. Thus, Macias argues that the court was required to rule on his motion and that dismissal was improper.

NRCP 41 provides that “if a plaintiff fails to bring the action to trial within 5 years after the action was filed,” dismissal is mandatory. NRCP 41(e)(2)(B); *see also Thran v. First Jud. Dist. Ct.*, 79 Nev. 176, 181, 380 P.2d 297, 300 (1963) (recognizing the mandatory nature of the rule). Because Macias did not raise his argument below regarding the district court’s failure to rule on his December 31, 2018, pleading when he opposed the motion to dismiss, we need not consider it. *See Fick v. Fick*, 109 Nev. 458, 462, 851 P.2d 445, 448 (1993) (explaining that appellate courts need not consider an argument raised for the first time on appeal). Nevertheless, even if we considered this argument on the merits, merely filing a motion for judgment does not constitute bringing the case to trial. *See United Ass’n of Journeymen & Apprentices of Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 819, 783 P.2d 955, 957 (1989) (explaining that “a motion for summary judgment, without more, is insufficient to constitute bringing the case to trial”); *Monroe v. Columbia Sunrise Hosp. & Med. Ctr.*, 123 Nev. 96, 100, 158 P.3d 1008, 1010 (2007) (providing that proceedings leading to a complete grant of summary judgment constitute trial under NRCP 41(e), but proceedings leading to denial of summary judgment do not). To the extent the district court did not specifically rule on his motion when it entered the January 2019 order resolving NDOC’s motion to dismiss, it is well-established that where the court

does not make a formal ruling, it is treated as an implicit denial of the motion. *See Bd. of Gallery of Hist., Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (explaining that the absence of a ruling by the district court on a motion constitutes a denial of the motion). Therefore, Macias is not entitled to relief based on this argument.

Because Macias fails to present any other arguments that the district court erroneously dismissed the case pursuant to NRCP 41(e), he does not demonstrate he is entitled to relief. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider issues that are not supported by cogent argument).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


Bulla, C.J.


Gibbons, J.


Westbrook, J.

³To the extent Macias requests the appointment of pro bono counsel, we deny the request.

cc: Hon. Steve L. Dobrescu, District Judge
Attorney General/Carson City
Frank Anthony Macias
Seventh District Court Clerk