FILED
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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ASHLEY LAFFOON, Appellant, vs. KAMERON TANNER PLANTS, Respondent.	No. 90246-COA

ORDER OF REVERSAL AND REMAND

Ashley Laffoon appeals from district court orders dismissing a complaint and denying reconsideration of the dismissal in a tort action. Second Judicial District Court, Washoe County; Hon. Egan K. Walker, Chief Judge.

In May 2024, Laffoon sued respondent Kameron Tanner Plants for negligence in connection with an apparent incident of domestic violence. Laffoon subsequently served Plants with a copy of the summons and complaint and after no further action was taken, the district court entered an order in early October 2024, indicating that the case would be dismissed if the parties did not proceed with the matter within 20 days. Five days later, Laffoon filed a request for a clerk's entry of default with the district court. While that request remained pending, the district court entered an order in February 2025, which, without referencing legal authority, dismissed Laffoon's complaint generally on the grounds of lack of prosecution. The court found that Laffoon failed to proceed with a default against Plants or otherwise take any

action after filing her request for a clerk's entry of default. Laffoon filed a motion for reconsideration that was denied. This appeal followed.[1]

On appeal, Laffoon argues that the district court could not properly dismiss her complaint for want of prosecution under the circumstances presented here. Although the district court did not reference its inherent authority, the power to dismiss for want of prosecution is grounded in either the court's inherent authority or in NRCP 41(e), which permits the court to dismiss for want of prosecution when a case is not brought to trial within two years of its commencement, and requires dismissal when a trial does not occur within five years after a case was commenced. Because the district court dismissed the present case for want of prosecution within less than two years after it was commenced, the district arguably relied on its inherent authority to dismiss rather than NRCP 41(e). *See Hunter v. Gang*, 132 Nev. 249, 256, 377 P.3d 448, 453 (Ct. App. 2016) (concluding a district court relied on its inherent authority to dismiss a case for want of prosecution where the court cited no authority in its dismissal order and less than two years had passed before the dismissal was granted).

Nevertheless, the court's inherent authority to dismiss under such circumstances is a potent power susceptible to misuse and, therefore, must be exercised sparingly with restraint and discretion. *Id.* at 258, 377 P.3d at 454. "The element necessary to justify dismissal for failure to prosecute is want of

[1]We note that Plants did not file an answering brief, and the supreme court ordered this matter to be decided without such a brief from Plants.

diligence on the part of the plaintiff, whether individually or through counsel." *Moore v. Cherry*, 90 Nev. 390, 395, 528 P.2d 1018, 1022 (1974). This court will not disturb the district court's decision to dismiss a case for want of prosecution absent a gross abuse of discretion. *Hunter*, 132 Nev. at 259, 528 P.2d at 455.

Here, the district court entered an order in October 2024, requiring Laffoon to proceed with her case within 20 days to avoid dismissal. Five days later, Laffoon filed a request for clerk's entry of default, thereby demonstrating that she had not abandoned the case and intended to proceed with the matter. Nevertheless, the court still dismissed her case for want of prosecution, without a hearing,[2] based on Laffoon's failure to proceed with a default or otherwise take further action. This decision was made notwithstanding Laffoon's inability to obtain a default judgment while her request for a clerk's

[2]While the district court may have relied on its inherent authority to dismiss Laffoon's case, we note that when the district court sua sponte dismisses a case for want of prosecution under NRCP 41(e), the court must first enter an order to show cause and, at the least, permit an opportunity for briefing, which may be followed by a hearing. *See* NRCP 41(e)(1)(B); *cf. Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (providing that "procedural due process requires notice and an opportunity to be heard." (internal quotation marks omitted)). We also note that while the Second Judicial District does not have a rule that addresses this situation, the Eighth Judicial District has safeguards in place to prevent the unwarranted early dismissal of cases for lack of prosecution. Specifically, the Eighth Judicial District's rule allows for dismissal without prejudice if the case has been pending for more than 12 months and no action has been taken for more than 6 months, and has a redemption clause that allows automatic reinstatement of the case if so requested within 30 days of service of the written notice of dismissal. *See* EDCR 2.90(a), (c).

entry of default remained pending, *see* NRCP 55(a), (b); *Landreth v. Malik*, 127 Nev. 175, 189, 251 P.3d 163, 172 (2011) (recognizing that a plaintiff must obtain a clerk's entry of default before a default judgment may be entered), and she could not otherwise move her case forward in light of Plants' failure to file an answer, *cf.* NRCP 16.1(b)(2)(A) (contemplating service of an answer before a case may proceed to an early case conference).

And while the district court subsequently justified its dismissal based on Laffoon's failure to file a request for submission of her request for clerk's entry of default pursuant to WDCR 12(4), NRCP 55(a) mandates no such action, and instead, requires the court clerk to enter default once a party demonstrates by affidavit or otherwise that the opposing party has failed to plead or defend an action. *State ex rel. Harvey v. Second Jud. Dist. Ct.*, 117 Nev. 754, 767, 32 P.3d 1263, 1272 (2001) ("[A] clerk of court has a ministerial duty to accept and file documents that are in proper form" and "also acts in a ministerial capacity in entering a default."). As a result, we conclude that the district court abused its discretion by dismissing Laffoon's case for want of prosecution under the circumstances presented here. *See Hunter*, 132 Nev. at 259, 528 P.2d at 455. Accordingly, we,

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order, including the possible entry of a clerk's default.[3]

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[3]Insofar as Laffoon raises arguments that are not specifically addressed in this order, we need not reach them given our disposition of this appeal.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Egan K. Walker, Chief Judge
Clarence E. Gamble
Kameron Tanner Plants
Second District Court Clerk