

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS WHITE, SR.,
Appellant,
vs.
HARRAH'S LAS VEGAS, A
CORPORATION OF NEVADA,
Respondent.

No. 39664

FILED

MAY 22 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a district court order dismissing appellant's personal injury action for failure to bring it to trial within five years, as required by NRCP 41(e).¹ Because the court did not err, we affirm.²

Thomas White, Sr., an Arizona resident, filed his complaint on April 11, 1997, alleging that he was injured at the Harrah's Las Vegas casino on August 16, 1995, while participating in a slot tournament. On June 23, 1997, Harrah's filed an NRS 18.130 demand for security, based

¹NRCP 41(e) provides, in pertinent part:

Any action . . . shall be dismissed by the court . . . on motion of any party . . . after due notice to the parties, unless such action is brought to trial within five years after the plaintiff has filed his action, except where the parties have stipulated in writing that the time may be extended.

²Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

upon White's Arizona residency.³ On June 30, 1997, White filed the requisite security bond. Thereafter, White was granted an exemption from mandatory court-annexed arbitration, and was given a February 9, 1999 trial date. That trial setting was vacated on the parties' stipulation, and trial was reset to begin on October 19, 1999. However, at the October 11, 1999 calendar call, the court reset the trial to begin on February 1, 2000, due to the court's trial stack. Trial was not held then, either, again on the parties' stipulation. According to the district court's minutes, there was no activity in this case between the October 1999 calendar call and April 2002.

On April 11, 2002, White filed an emergency motion for a trial setting. Harrah's opposed the motion, and counter-moved for dismissal under NRCP 41(e). At the April 15, 2002 hearing on the motions, White's attorney argued that NRS 18.130 had stayed the case for seven days in June 1999, thereby tolling NRCP 41(e)'s five-year period and extending the trial deadline to April 18, 2002. Since District Judge Sobel had agreed to empanel a jury and commence trial by then, White's attorney asked the court to send the case to overflow for assignment to Judge Sobel for trial. Harrah's argued that NRS 18.130's stay of the proceedings until the cost bond was posted did not toll the five-year period. The district court agreed with Harrah's, denied White's emergency motion and granted Harrah's motion to dismiss. In doing so, the court did not err.

³NRS 18.130(1) provides that a defendant may require an out-of-state plaintiff to secure the costs and charges that might be awarded against him by filing and serving a written demand within the time limit for answering the complaint.

NRCP 41(e) is mandatory; if the action is not brought to trial within five years, the district court must dismiss it unless the parties agree to extend the deadline.⁴ This court has allowed the exclusion of only two periods from the five-year calculation: the time a medical malpractice case is pending before a screening panel and the time a case is stayed by district court order.⁵ In each of these cases, the parties were prevented from proceeding to trial by circumstances outside their control and it would have been patently unfair to dismiss their actions.

On the other hand, in Morgan v. Las Vegas Sands, Inc.,⁶ this court rejected an argument that the time spent in mandatory court-annexed arbitration is similarly outside the parties' control and should also be excluded from the five-year period. Morgan concluded that the plaintiff's failure to prosecute the case to trial caused its dismissal rather than any inherent unfairness in the arbitration rules or NRCP 41(e).

Here, White argues that the seven days the case was stayed pending his posting of security in June 1997 should be excluded from the five-year period. NRS 18.130 provides that when a defendant requires an out-of-state plaintiff to post security, all proceedings in the action shall be stayed until the plaintiff posts security, and if the plaintiff fails to do so within thirty days, the court may dismiss the action.


⁴Morgan v. Las Vegas Sands, Inc., 118 Nev. ___, 43 P.3d 1036 (2002).

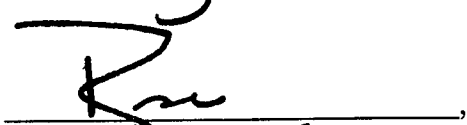
⁵Id.; Baker v. Noback, 112 Nev. 1106, 922 P.2d 1201 (1996); Boren v. City of North Las Vegas, 98 Nev. 5, 638 P.2d 404 (1982).

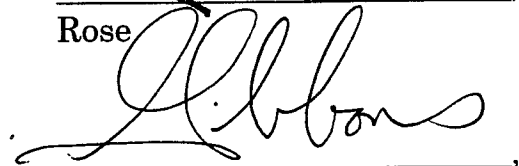
⁶118 Nev. ___, 43 P.3d 1036.

We perceive even less reason for excluding NRS 18.130(1)'s stay period than for excluding the time spent in mandatory court-annexed arbitration, a proposition that was rejected in Morgan. Although public policy favors a trial on the merits, it also favors the expeditious resolution of legitimate claims. White's failure to timely bring the action to trial clearly was not caused by the one-week stay, but rather by the two and one half year period when he did nothing to advance the matter. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Agosti


_____, J.
Rose


_____, J.
Gibbons

cc: Hon. James A. Brennan, Senior Judge
Gerald F. Neal
Potter Law Offices
Cohen, Johnson, Day, Jones & Royal
Clark County Clerk