

Monroe v. Columbia Sunrise Hospital and Medical Center,
123 Nev. Adv. Op. 13 (May 17, 2007)¹

CIVIL PROCEDURE – SUMMARY JUDGMENT

Summary

Appellant Monroe appeals from the Eighth Judicial District Court’s grant of dismissal pursuant to NRCP 41(e). Monroe brought claims on behalf of herself and her son James.

Disposition/Outcome

Reversed in part and affirmed in part. The district court’s order dismissing Monroe’s claims was in error because the district court’s earlier order granting summary judgment constituted a “trial” under NRCP 41(e). The Nevada Supreme Court affirmed the district court’s order dismissing Monroe’s son’s claims because the district court’s order granting partial summary judgment did not constitute a “trial” under NRCP 41(e).

Factual and Procedural History

During her pregnancy, Monroe visited Sunrise Hospital on multiple occasions with complaints about her pregnancy. None of the doctors or staff members at Sunrise that treated Monroe during these visits provided any aggressive treatments. Almost immediately after birth, James Monroe demonstrated signs of neurological damage (these symptoms continued through the time of the Court’s review).

In August 1998, Monroe filed a medical malpractice action against Sunrise. In March 2003, the district court granted Sunrise’s motion for summary judgment on Monroe’s individual claims and granted Sunrise’s motion for partial summary judgment on James’ claims. In April 2004, the Nevada Supreme Court granted Monroe’s writ petition, instructing the district court to vacate the summary judgment orders and allow Monroe to amend her complaint.

In October 2004, Sunrise filed a motion to dismiss under NRCP 41(e) claiming that Monroe had failed to bring her case to trial within the five-year limit specified in NRCP 41(e). The district court granted the motion and dismissed all claims against Sunrise. Monroe appeal.

Discussion

I. **Relationship between summary judgment and the time limit in NRCP 41(e)**

The court began its decision by acknowledging that dismissal is mandatory under NRCP 41(e) if the plaintiff has failed to bring the action to trial. The court next held that a complete grant of summary judgment qualifies as a “trial” under NRCP 41(e), as the court had previously held that a “trial” is “the examination before a competent tribunal, according to the law of the land, of questions of fact or law put in issue by the pleadings, for the purpose of determining the

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rights of the parties.”² The court did, however, hold that “when a district court ruling does not resolve the entire action between two parties, the plaintiff must continue to advance the remaining claims to avoid the ‘strict penalty’ of NRCP 41(e).”³

The court rejected Sunrise’s argument that an action does not constitute a trial for purposes of NRCP 41(e) unless “the court resolve[s] all claims between all parties.”⁴ The court held that “when an action includes multiple plaintiffs, that action may be brought to trial so long as the disposition completely resolves all claims between those two parties.”⁵

II. Appeal extension under NRCP 41(e)

NRCP 41(e) also provides for a new three-year time limit to bring a case to trial when “an appeal has been taken and judgment reversed with cause remanded for a new trial.” The court denied Monroe’s contention that the three-year window applied in this case because the court issued a writ of mandamus and a notice in lieu of remittitur, not a remittitur. Thus, the additional three-year window did not apply.

III. Dismissal with prejudice

Monroe’s final contention was that district court’s dismissal of James’ claims with prejudice was in error because the statute of limitations had not run on those claims. The court rejected this argument finding that district courts have “broad, but not unbridled, discretion in determining whether dismissal under NRCP 41(e) should be with or without prejudice.”⁶ A district court should consider a number of factors in exercising its discretion.⁷

As a general rule, the statute of limitations for an injury action against a health-care provider is the earlier of, four years from the date of the injury or two year from the time the plaintiff discovers or should have discovered the injury. If, however, the child suffers brain damage or birth defect, the statute of limitations is extends until the child turns 10. This except only applies, however, when the parent fails to bring an action within the normal two or four year statute of limitation period. In this case, Monroe brought James’ claims within the four-year limitation period, and so the ten-year exception did not apply. After dismissal, the statute of limitations had expired on James’ claims and the ten-year exception did not apply, so the district court did not error in dismissing James’ claims with prejudice.

Conclusion

The court reversed the district court’s grant of dismissal on Monroe’s claims because the summary judgment order constituted a “trial” under NRCP 41(e). The court affirmed the district court’s dismissal of James’ claims because the order granting partial summary judgment did not constitute a “trial” under NRCP 41(e). The court also affirmed that the district court’s dismissal of James’ claims with prejudice because the statute of limitations period had expired.

² Monroe v. Columbia Sunrise Hospital and Medical Center, 123 Nev. Adv. Op. 13, at 4 (May 17, 2007) (quoting United Ass’n of Journeymen v. Manson, 105 Nev. 816, 819-20) (internal quotation marks omitted).

³ *Id.* at 5; see Allyn v. McDonald, 117 Nev. 907, 910-11, 34 P.3d 584, 586 (2001).

⁴ *Id.* at 6.

⁵ *Id.* at 7.

⁶ *Id.* at 9.

⁷ *Id.*