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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD IVOR JENKINS, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ERIKA L. MENDOZA, DISTRICT JUDGE, Respondents, and CINDY TRUSSEL, Real Party in Interest.	No. 91703

ORDER DENYING PETITION FOR A WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order declining to dismiss a torts action. On August 5, 2020, real party in interest Cindy Trussel sued petitioner Ronald Ivor Jenkins for injuries suffered in a motor vehicle accident. Trussel obtained a default judgment against Jenkins. Jenkins' insurance carrier retained counsel to represent Jenkins and appeared in the action. In September 2024, the district court granted Jenkins' motion to set aside the default judgment against him. The district court set the case for trial in November 2025 and concluded there was good cause to extend the five-year period until the end of the trial stack. On August 29, 2025, Jenkins moved to dismiss the case because Trussel had not brought the case to trial within five years of filing the complaint. The district court denied the motion, finding the five-year period had not yet expired due to the court-ordered extension of time and the Eighth Judicial District Court (EJDC)'s administrative orders barring civil trials during the COVID-19

pandemic and staying the running of the five-year period for purposes of NRCP 41(e). Jenkins now seeks a writ of mandamus directing the district court to dismiss the case.

"A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see also* NRS 34.160. "Whether to entertain a writ petition is within this court's discretion." *Paul v. Second Jud. Dist. Ct.*, 141 Nev., Adv. Op. 38, 574 P.3d 418, 421 (2025). 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 dismissal under NRCP 41(e)(2)(B) is mandatory, we have often recognized that writ petitions requesting NRCP 41(e)(2)(B) dismissal may warrant extraordinary relief." *Paul*, 141 Nev., Adv. Op. 38, 574 P.3d at 421.

Jenkins argues the district court erred by denying his motion to dismiss because the court should have applied the version of NRCP 41(e) in effect when the complaint was filed, not the version in effect when the motion to dismiss was filed. We disagree. When we amended NRCP 41(e) to address the effects of the COVID-19 pandemic, setting a future effective date was not an act specifying that the amended rule would not apply to all pending actions. *See* NRCP 86(a) (providing that the rules apply to all pending actions unless this court specifies otherwise or doing so "would not be feasible or would work an injustice"). And we have consistently applied the version of the rules in effect on the date the subject motion was filed, not the date the complaint was filed. *See*, *e.g.*, *Paul v*, 141 Nev., Adv. Op. 38, 574 P.3d at 421-22 (applying the

2021 version of NRCP 41(e) to resolve a dispute as to whether the five-year rule had run on a complaint filed in 2014); *Arnold v. Kip*, 123 Nev. 410, 412-14 n.2, 168 P.3d 1050, 1051-52 n.2 (2007) (applying the 2004 version of the NRCP to evaluate an order on a motion filed in 2004, though the NRCP was amended in 2005). Thus, we conclude Jenkins fails to demonstrate writ relief is necessary based on an application of an incorrect version of NRCP 41(e). *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (explaining that a petitioner seeking writ relief from this court bears the burden of demonstrating that extraordinary relief is warranted).

Moreover, when the amended rule went into effect, the EJDC's administrative orders were already in place, tolling the time to bring a case to trial for purposes of the rule. *See*, *e.g.*, EJDC AO 20-01 (Mar. 13, 2020) (tolling the time to bring a case to trial under NRCP 41(e) for 30 days); EJDC AO 20-17 (June 1, 2020) (continuing to stay trial for purposes of NRCP 41(e)). Those administrative orders and the district court's good cause finding extended the deadline to bring this case to trial beyond five years.[1] To the extent Jenkins contends it was the case's procedural posture that prevented the case from proceeding to trial, the stays nonetheless applied to this case and must be

[1]Although the district court concluded the district-wide stay on civil jury trials ended on February 1, 2021, with the issuance of EJDC AO 21-01, that order only allowed civil trials to resume. Administrative Order 21-01 explained that AO 20-17, which operated to "stay trial in civil cases for purposes of tolling NRCP 41(e)" unless a judge lifted the stay to conduct trial, remained in effect. EJDC AO 20-17 (June 1, 2020). And the tolling effect of the district's administrative orders on NRCP 41(e)'s five-year period did not end until July 1, 2021. *See* EJDC AO 21-04 (June 4, 2021) (superseding Administrative Orders 20-01 and 20-17 and "continu[ing] to stay trial in civil cases for purposes of tolling NRCP 41(e) until July 1, 2021, except where a District Court Judge makes findings to lift the stay in a specific case to allow the case to proceed to [trial]").

considered in calculating the time to bring the matter to trial. *Boren v. City of N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982) (explaining that "[a]ny 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)"). Because the five-year timeframe for Trussel to bring the action to trial was extended, we conclude the district court did not manifestly abuse its discretion by denying Jenkins' motion to dismiss. *See Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 680-81, 476 P.3d 1194, 1196-97 (2020) (refusing to substitute this court's judgment for that of the district court absent a manifest abuse of discretion). Thus, Jenkins has not demonstrated that extraordinary relief is warranted here.[2] *Pan*, 120 Nev. at 228, 88 P.3d at 844. Accordingly, we

ORDER the petition DENIED.

Herndon, C.J.

Bell, J.

Stiglich, J.

cc: Hon. Erika L. Mendoza, District Judge
Clark McCourt, LLC
Wood, Smith, Henning & Berman, LLP/Las Vegas
The Eighth District Court Clerk

[2]Given our decision, we need not address Trussel's additional arguments.