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Summary of Dornbach v. Tenth Jud. Dist. Ct., 130 Nev. Adv. Op. 33

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Summary

The Court determined two issues: (1) whether the NRCP 16.1(e) time period begins to run when the defendant appears or answers and (2) whether a district court may consider its own internal delays when justifying a deadline extension.

Disposition

The time periods set forth in NRCP 16.1(e) begin to run when the defendant appears, regardless of whether the appearance is by motion or answer, and a district court may find that its own internal delays constitute compelling and extraordinary circumstances, thus justifying a deadline extension.

Factual and Procedural History

On December 6, 2011, plaintiffs, Ellingwood, filed a complaint against petitioner, Dornbach, for a deficiency judgment. On February 7, 2012, Dornbach filed a motion to dismiss for failure to state a claim pursuant to NRCP 12(b)(5); however, due to the death of the only sitting district judge, a hearing for the motion did not occur until January 7, 2013. While the motion remained pending, Dornbach did not file an answer to plaintiffs' complaint, and, on December 6, 2012, 284 days after Dornbach had filed the NRCP 12(b)(5) motion, Dornbach filed a motion to dismiss the case without prejudice due to plaintiffs' failure to comply with NRCP 16.1(e).

Although the district court recognized plaintiffs' failure, it denied Dornbach's motion, reasoning that the death of the judge and the resulting delays constituted compelling and extraordinary circumstances that justified extending the NRCP 16.1 deadline. Dornbach sought a writ of mandamus to compel the district court to dismiss the case.

Discussion

Dornbach argues that the district court improperly denied his NRCP 16.1 motion and ordered the parties to meet and confer after the deadlines had expired.

Whether to consider the petition for a writ of mandamus

Generally, the Nevada Supreme Court "decline[s] to consider writ petitions that challenge interlocutory district court orders denying motions to dismiss" because appeals from *pos* a final judgment provide an adequate remedy.² However, if an important issue of law needs clarification and if considerations of judicial economy and administration militate in favor of granting the petition, this Court may consider writ petitions. Here, NRCP 16.1 is relevant in almost all civil cases, and our consideration of this petition promotes judicial economy and administration because the questions were presented early in the proceedings and cannot adequately be addressed on appeal.

¹ By Kylee Gloeckner.

² *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197-98, 179 P.3d 556, 558-59 (2008).

The meaning of “appearance” in NRCP 16.1(e)

NRCP 16(b)(1) requires a plaintiff to hold an early case conference within 30 days after the defendant files an answer to the complaint; the deadline may be extended no later than 180 days from when the defendant’s appearance is served, unless compelling and extraordinary circumstances justify an extension. Additionally, NRCP 16.1(c) requires the parties to file a report regarding the conference within 30 days after the conference. NRCP 16.1(e) then dictates that if plaintiffs in civil cases fail to have a case conference within 180 days or to file a case conference report within 240 days after an *appearance*, a district court *may* dismiss the complaint without prejudice under NRCP 16.1(e) and sanction the attorney.

Here, both parties disagree as to when Dornbach’s appearance occurred. Dornbach argues that he first *appeared* by filing the NRCP 12(b)(5) motion to dismiss; whereas, Ellingwood argues that Dornbach should not be deemed to have appeared until he actually files an *answer* to the complaint. An “appearance is a coming into court as a party or interested person, . . . especially a defendant’s act of taking part in a lawsuit . . . by answer, demurrer, or motion.” An “answer is a defendant’s first pleading that addresses the merits of the case.” The time periods set forth in NRCP 16(e) begin when a defendant appears, regardless of whether it is by motion or answer. Thus, Dornbach appeared when he filed the NRCP 12(b)(5) motion and, thus, the NRCP 16.1(e) deadlines expired before he filed the NRCP 16.1(e) motion to dismiss.

The district court did not arbitrarily or capriciously exercise its discretion by denying Dornbach’s motion to dismiss

Dornbach argues that the District court’s reasoning was arbitrary because a court’s internal delays is not among the factors used when deciding an NRCP 16.1(e) motion to dismiss as established by precedent. These factors include: “the length of the delay, whether the defendant . . . caused the delay, whether the delay has impeded the timely prosecution of the case, general considerations of case management . . . , or whether the plaintiff has provided good cause for the delay.”³ However, this list of factors is “nonexhaustive.”⁴ Here, Dornbach did not answer plaintiffs’ complaint, and, even though plaintiffs were required to hold an early case conference regardless of their complaint being answered, doing so may have been fruitless. Additionally, the district court’s internal delays are relevant to general considerations of case management; thus the court’s consideration regarding the internal delays was not improper.

The district court did not arbitrarily or capriciously exercise its discretion by ordering the parties to comply with NRCP 16.1 after the deadlines expired

The district court found that the death of the district judge and the resulting delays were extraordinary circumstances; therefore, an extension of the deadline for the conference was justified. This was not a arbitrary or capricious exercise of discretion. NRCP 16.1(b)(1) does not state that the compelling and extraordinary circumstances cannot arise from within the district court itself and the court’s consideration of its own delays may be relevant when justifying an extension.

³ Arnold v. Kip, 123 Nev. 410, 415–16, 168 P.3d 1050, 1053 (2007).

⁴ *Id.*

Conclusion

The time periods set forth in NRCP 16.1(e) began to run when defendant appeared by filing a NRCP 12(b)(5) motion, not when he filed an answer. Thus, the deadlines expired before Dornbach filed a motion to dismiss. However, as the district court found, its own internal delays constituted compelling and extraordinary circumstances, excusing plaintiffs' delay and justifying an extension to complete the early case conference and report. The petition for a writ of mandamus is denied.