

SUPREME COURT OF MISSISSIPPI

Shirley Jean Collins v. Koppers, Inc.

Collins v. Koppers · No. No. 2009-CA-01678-SCT · Decided September 9, 2009

SUMMARY

The Mississippi Supreme Court affirmed the dismissal with prejudice of Shirley Jean Collins’s personal-injury claims against defendants associated with a wood-treatment facility. The court held that the trial court did not abuse its discretion in dismissing the action under Mississippi Rule of Civil Procedure 41(b) for prolonged failure to provide ordered expert information establishing causation. The court also affirmed the award of attorneys’ fees and costs under Mississippi Rule of Civil Procedure 11 and the Litigation Accountability Act.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Lamar, Justice; Waller, C.J.; Carlson, P.J.; Dickinson, P.J.; Randolph, J.; Kitchens, J.; Lamar, J.; Chandler, J.; Pierce, J.; King, J. (not participating)
JURISDICTION	Mississippi
DECIDED	September 9, 2009
DOCKET	No. 2009-CA-01678-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Grenada County Circuit Court's dismissal with prejudice under Mississippi Rule of Civil Procedure 41(b) for failure to comply with a court order requiring specific expert disclosures, together with an award of attorneys' fees and costs. The trial court also granted summary judgment in the alternative; the Supreme Court held that issue moot after affirming the Rule 41(b) dismissal.
STANDARD OF REVIEW	Rule 41(b) dismissals and awards of sanctions under Mississippi Rule of Civil Procedure 11 and the Litigation Accountability Act are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	Shirley Jean Collins v. Koppers, Inc. f/k/a Koppers Industries, Inc., Beazer East, Inc. f/k/a Beazer Material and Services, Hanson, PLC, Hanson Building Material Limited f/k/a Hanson, PLC, Hanson

Holdings Limited, Hanson Holdings Basalt, Inc., Hanson Holdings Aragonite, Inc., HBMA Holding, Inc., Three Rivers Management, Illinois Central Railroad Company

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QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by dismissing Collins's complaint with prejudice under Mississippi Rule of Civil Procedure 41(b) for failure to comply with court orders.
2. Whether the circuit court erred by granting summary judgment without a hearing.
3. Whether the circuit court abused its discretion by awarding attorneys' fees and costs against Collins and attorneys who had entered appearances or signed pleadings.

HOLDINGS

1. The circuit court did not abuse its discretion by dismissing Collins's claims with prejudice. The record showed a clear pattern of delay, intentional failure to provide court-ordered expert information, and conduct for which lesser sanctions would not have served the best interests of justice.
2. The summary-judgment issue was moot because the Supreme Court affirmed the independent Rule 41(b) dismissal with prejudice.
3. The circuit court did not abuse its discretion by awarding attorneys' fees and costs against Collins and attorneys who had entered an appearance or attached their names to pleadings.

KEY QUOTATIONS

"This Court reviews Rule 41(b) dismissals for an abuse of discretion." (¶ 18)

"dismissal for failure to comply with an order of the [trial] court is appropriate only where there is a clear record of delay or contumacious conduct and lesser sanctions would not serve the best interests of justice." (¶ 19)

"We find no abuse of discretion in the trial court's Rule 41(b) dismissal of Collins's claims, as there is a clear record of delay, lesser sanctions would not have sufficed, and there is evidence of intentional conduct." (¶ 25)

"We find no abuse of discretion in the trial court's decision to grant a dismissal with prejudice under Rule 41(b), making the summary judgment issue moot. We also find no abuse of discretion in its sanction award and therefore affirm the judgment." (¶ 38)

FACTUAL BACKGROUND

Collins alleged that exposure to toxic chemicals from a wood-treatment facility in Grenada County caused her heart condition, high blood pressure, dizziness, and diabetes. Despite repeated discovery requests and a specific court order, she did not identify expert evidence linking her individual injuries to particular chemicals, the manner and amount of exposure, or the alleged causation. Her supplemental responses merely referenced expert opinions from related litigation and did not provide evidence specific to her claims.

PROCEDURAL HISTORY

Collins originally joined approximately ninety-five plaintiffs in an action alleging injuries from toxic exposure at a wood-treatment facility. The circuit court severed the claims, required individual complaints satisfying the pleading requirements identified in *Harold's Auto Parts v. Mangialardi*, and ordered sanctions. After Collins filed an individual complaint, the court required a more definite statement and later ordered specific expert disclosures concerning general and specific causation. Collins failed to provide the ordered information, and the circuit court dismissed her claims with prejudice and awarded attorneys' fees and costs under Rule 11, Rule 37, and the Litigation Accountability Act. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *Harold's Auto Parts v. Mangialardi*, 889 So. 2d 493 (Miss. 2004)
- *Wallace v. Jones*, 572 So. 2d 371, 375-77 (Miss. 1990)
- *Wilson v. Nance*, 4 So. 3d 336, 341, 343-44 (Miss. 2009)
- *Southern v. Mississippi State Hospital*, 853 So. 2d 1212, 1214-15 (Miss. 2003)
- *Cox v. Cox*, 976 So. 2d 869, 876 (Miss. 2008)
- *Bowie v. Montfort Jones Memorial Hospital*, 861 So. 2d 1037, 1042 (Miss. 2003)
- *In re Spencer*, 985 So. 2d 330, 336-37 (Miss. 2008)
- *Tricon Metals & Services, Inc. v. Topp*, 537 So. 2d 1331, 1335 (Miss. 1989)
- *Foster v. Ross*, 804 So. 2d 1018, 1019-25 (Miss. 2002)
- *Mauck v. Columbus Hotel Co.*, 741 So. 2d 259, 269-70 (Miss. 1999)
- *BellSouth Personal Communications, LLC v. Board of Supervisors*, 912 So. 2d 436, 446-47 (Miss. 2005)
- *McKee v. McKee*, 418 So. 2d 764, 767 (Miss. 1982)
- *In re Estate of Gillies*, 830 So. 2d 640, 646 (Miss. 2002)

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