

SUPREME COURT OF MISSISSIPPI

Illinois Central Railroad Company v. Martha Moore, Administratrix
of the Estate of Willie B. Moore, Deceased

Illinois Central · No. No. 2006-IA-00884-SCT · Decided May 9, 2006

SUMMARY

The Mississippi Supreme Court addresses an interlocutory appeal concerning the denial of Illinois Central Railroad Company's motion to dismiss for want of prosecution under Mississippi Rule of Civil Procedure 41(d). The court holds that the plaintiff's letters requesting that the case remain on the docket did not constitute sufficient action of record or establish good cause after nearly seven years of inactivity. The court reverses and renders, directing dismissal without prejudice.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Justice; Smith, Chief Justice; Carlson, Justice; Dickinson, Justice; Lamar, Justice; Easley, Justice; Waller, Presiding Justice; Diaz, Presiding Justice; Graves, Justice
JURISDICTION	Mississippi
DECIDED	May 9, 2006
DOCKET	No. 2006-IA-00884-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Illinois Central Railroad Company obtained permission for an interlocutory appeal from the Amite County Circuit Court's denial of its motion to dismiss for want of prosecution under Mississippi Rules of Civil Procedure 41(d) and 41(b).
STANDARD OF REVIEW	A trial court's ruling on dismissal for want of prosecution under Rule 41(d) is reviewed for abuse of discretion. The Court stated that it would not disturb such a ruling absent an abuse of discretion; the dissent characterized the applicable Rule 41(b) review as abuse of discretion or manifest error.
PRECEDENTIAL VALUE	Published, en banc Mississippi Supreme Court opinion; majority opinion is precedential.

PARTIES

Illinois Central Railroad Company v. Martha Moore, Administratrix of the Estate of Willie B. Moore, Deceased

TOPICS

motions to dismiss

civil procedure

interlocutory appeal

appellate procedure

personal injury

PRACTICE AREAS

civil procedure

appellate procedure

personal injury

wrongful death

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying Illinois Central's motion to dismiss for want of prosecution under Mississippi Rule of Civil Procedure 41(d).
2. Whether letters to the clerk merely requesting that a case remain on the active docket constitute an action of record or a written application supported by good cause under Rule 41(d)(1).

HOLDINGS

1. Letters that merely request that a case remain on the docket, are not filed as an action of record, do not constitute a properly presented application to the court, and do not show good cause do not satisfy Rule 41(d)(1). To avoid dismissal, a party must file either an actual action of record or a motion seeking continuation of the case.
2. The circuit court abused its discretion by denying Illinois Central's Rule 41(d) motion. Because Moore failed to take qualifying action of record or show good cause, the action was required to be dismissed without prejudice.

KEY QUOTATIONS

"If action of record is not taken or good cause is not shown, the court shall dismiss each such case without prejudice." (¶ 8)

"To eliminate any question of what is an "application in writing" or "action of record," either a motion to avoid dismissal of the cause or an actual "action of record" must be filed." (¶ 13)

"Since Moore's "application in writing" failed to establish "good cause," and no documentary or testimonial evidence was presented at the hearing demonstrating "good cause," Rule 41(d)(1) requires that the case shall be dismissed "without prejudice."" (¶ 17)

FACTUAL BACKGROUND

Willie B. Moore worked for Illinois Central Railroad for approximately thirty-five years and died of a fatal heart attack while performing his conductor duties on October 6, 1995. His administratrix filed suit alleging that Illinois Central negligently failed to provide timely medical care and assigned him duties beyond his physical capacity despite known diabetes and cardiovascular disease. After limited discovery, the record showed no

substantive activity from December 28, 1998, through October 31, 2005, apart from clerk notices of possible dismissal and Moore's letters requesting that the case remain on the docket.

PROCEDURAL HISTORY

Martha Moore filed a Federal Employers' Liability Act personal-injury and wrongful-death action in 1997. After December 1998, the case had no substantive activity for nearly seven years, although Moore sent letters responding to clerk notices and requesting that the case remain active. The circuit court denied Illinois Central's motion to dismiss, entered a scheduling order, and expedited the case. The Mississippi Supreme Court granted interlocutory review, reversed, and rendered judgment dismissing the case without prejudice.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

No remand was ordered in substance. The Supreme Court reversed the circuit court's order and rendered dismissal of the case without prejudice.

CASES CITED

- Box v. State, 437 So. 2d 19, 21 (Miss. 1983)
- Cucos, Inc. v. McDaniel, 938 So. 2d 238, 240, 242, 247-48 (Miss. 2006)
- Watson v. Lilliard, 493 So. 2d 1277, 1278-79 (Miss. 1986)
- Mississippi Farm Bureau Mutual Insurance Co. v. Parker, 921 So. 2d 260, 265 (Miss. 2005)
- Guidry v. Pine Hills Country Club, Inc., 858 So. 2d 196, 199 (Miss. Ct. App. 2003)
- Pennoyer v. Neff, 95 U.S. 714, 733 (1878)
- Shaffer v. Heitner, 433 U.S. 186, 212 (1977)
- Roebuck v. City of Aberdeen, 671 So. 2d 49, 50 (Miss. 1996)
- Carter v. Clegg, 557 So. 2d 1187, 1190 (Miss. 1990)
- Walker v. Parnell, 566 So. 2d 1213, 1216, 1218 (Miss. 1990)
- In re Estate of Law v. Law, 869 So. 2d 1027, 1029 (Miss. 2004)
- Rives v. Peterson, 493 So. 2d 316 (Miss. 1986)
- Cotton v. McConnell, 435 So. 2d 683, 685 (Miss. 1983)
- Culbreath v. Johnson, 427 So. 2d 705, 707-08 (Miss. 1983)
- Dinet v. Gavagnie, 948 So. 2d 1281, 1283, 1285 (Miss. 2007)
- Walters v. Patterson, 531 So. 2d 581, 583 (Miss. 1988)
- Wallace v. Jones, 572 So. 2d 371, 375 (Miss. 1990)
- Hine v. Anchor Lake Property Owners Association, 911 So. 2d 1001, 1003 (Miss. Ct. App. 2005)
- Vosbein v. Bellias, 866 So. 2d 489, 492 (Miss. Ct. App. 2004)

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