

SUPREME COURT OF RHODE ISLAND

Silvia v. Brule

9 A.3d 659 (R.I. 2010) · No. No. 2009-285-Appeal · Decided November 24, 2010

SUMMARY

The Rhode Island Supreme Court affirmed the dismissal of Lisa Silvia’s claims against Warren police officers and the Town of Warren for failure to prosecute under Superior Court Rule of Civil Procedure 41(b)(2). The court held that the trial justice did not abuse his discretion given Silvia’s prolonged failure to respond to discovery, disregard of a discovery order, and failure to appear for trial.

CASE DETAILS

|                    |                                                                                                                                                                                                 |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | Supreme Court of Rhode Island                                                                                                                                                                   |
| JURISDICTION       | Rhode Island                                                                                                                                                                                    |
| DECIDED            | November 24, 2010                                                                                                                                                                               |
| DOCKET             | No. 2009-285-Appeal                                                                                                                                                                             |
| DISPOSITION        | affirmed                                                                                                                                                                                        |
| PROCEDURAL POSTURE | Pro se appeal from a Superior Court judgment dismissing Silvia's civil action for failure to prosecute under Rule 41(b)(2) of the Superior Court Rules of Civil Procedure.                      |
| STANDARD OF REVIEW | Abuse of discretion. The Supreme Court reviewed whether the trial justice's findings were supported by the evidence and whether the trial justice misconceived or overlooked material evidence. |
| PRECEDENTIAL VALUE | Published, precedential Rhode Island Supreme Court opinion                                                                                                                                      |
| PARTIES            | Lisa Silvia v. Roland Brule, Other Warren police officers, Town of Warren                                                                                                                       |

TOPICS

- default
- civil procedure
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

- civil procedure
- appellate procedure
- civil rights

QUESTIONS PRESENTED

1. Whether the Superior Court abused its discretion by dismissing Silvia's action for failure to prosecute under Rule 41(b)(2).
2. Whether Silvia's assertion that she was unaware of the trial date warranted relief from the dismissal.
3. Whether Silvia waived her appellate contention concerning notice of the trial date by failing to meaningfully brief it.

## HOLDINGS

1. The trial justice did not abuse his discretion in dismissing Silvia's action under Rule 41(b)(2) because her extreme and persistent delay, failure to comply with discovery and the order compelling discovery, and refusal to appear for the scheduled trial demonstrated a failure to prosecute.
2. Dismissal with prejudice was justified because Silvia's deliberate refusal to participate in the litigation continued for approximately three years and included disregard of court orders and failure to appear for trial.
3. Silvia's notice contention did not warrant relief because it was unpersuasive in light of her disregard of other court orders and was waived by her failure to engage in a meaningful appellate discussion of the issue.

## KEY QUOTATIONS

*"Although "[m]ere delay is not enough to warrant dismissal for lack of prosecution," Harvey, 764 A.2d at 143 (citing Scittarelli v. Providence Gas Co., 415 A.2d 1040, 1042 n. 1 (R.I.1980)), the delay at issue here was extreme and persistent, with no indication Silvia would ever proceed." (9 A.3d at 661)*

*"It was not the trial justice's responsibility to continue the case indefinitely until Silvia might decide to appear." (9 A.3d at 661)*

*"Furthermore, her failure to engage in a "meaningful discussion" of this contention on appeal "constitutes a waiver of that issue," and her claim of ignorance thus is foreclosed." (9 A.3d at 662)*

## FACTUAL BACKGROUND

Silvia's action alleged that Warren police officers used excessive force and unlawfully arrested her, and that the Town of Warren maliciously prosecuted her. The defendants served interrogatories and document requests, but Silvia did not respond for more than seven months and then ignored an order compelling her responses. When a date-certain trial was set, Silvia told her attorney that she would not attend and refused to sign her discovery responses. The trial justice dismissed the case for failure to prosecute, and the Supreme Court found the prolonged nonparticipation and disregard of court orders sufficient to support dismissal with prejudice.

## PROCEDURAL HISTORY

Silvia filed suit in Providence County Superior Court alleging excessive force, unlawful arrest, malicious prosecution, and a later assault by a Warren police officer. After Silvia failed for more than seven months to answer interrogatories or produce documents, the Superior Court granted a motion to compel and later entered a conditional dismissal order. Following additional delay, continuances, and Silvia's failure to appear for a date-

certain trial, the trial justice dismissed the action with prejudice under Rule 41(b)(2). The Rhode Island Supreme Court affirmed.

#### DISPOSITION

affirmed

#### REMAND INSTRUCTIONS

The record was remanded to the Superior Court after affirmance of the judgment.

#### CASES CITED

- *Bergeron v. Roszkowski*, 866 A.2d 1230, 1236-37 (R.I. 2005)
- *Harvey v. Town of Tiverton*, 764 A.2d 141, 143 (R.I. 2001)
- *Hyszko v. Barbour*, 448 A.2d 723, 726 (R.I. 1982)
- *Scittarelli v. Providence Gas Co.*, 415 A.2d 1040, 1042 n. 1 (R.I. 1980)
- *Plainfield Pike Gas & Convenience, LLC v. 1889 Plainfield Pike Realty Corp.*, 994 A.2d 54, 58 (R.I. 2010)
- *Wilkinson v. State Crime Laboratory Commission*, 788 A.2d 1129, 1132 n. 1 (R.I. 2002)
- *Samuelian v. Town of Coventry*, 701 A.2d 814, 815 (R.I. 1997) (mem.)
- *Faerber v. Cavanagh*, 568 A.2d 326, 330 (R.I. 1990)
- *Benjamin v. Aroostook Medical Center, Inc.*, 57 F.3d 101, 107-08 (1st Cir. 1995)
- *Richman v. General Motors Corp.*, 437 F.2d 196, 199 (1st Cir. 1971)