

SUPREME COURT OF FLORIDA

Wilson v. Salamon

923 So. 2d 363 (Fla. 2005) · No. SC04-140 · Decided October 20, 2005

SUMMARY

The Supreme Court of Florida held that a trial court order entered and filed to resolve a properly filed motion in good faith constitutes record activity under Florida Rule of Civil Procedure 1.420(e). The court rejected a subjective inquiry into whether record activity was passive or intended to hasten resolution, quashed the Second District Court of Appeal's decision, and remanded. The decision concerned dismissal for failure to prosecute.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Anstead, J.; Pariente, C.J.; Lewis, J.; Quince, J.; Bell, J.; Cantero, J.; Wells, J.
JURISDICTION	Florida
DECIDED	October 20, 2005
DOCKET	SC04-140
DISPOSITION	quashed
PROCEDURAL POSTURE	The Supreme Court of Florida reviewed a decision of the Second District Court of Appeal that affirmed dismissal of the plaintiff's action for failure to prosecute and certified a question of great public importance concerning whether an order entered to resolve a properly filed motion constitutes record activity under Florida Rule of Civil Procedure 1.420(e).
STANDARD OF REVIEW	De novo interpretation and application of Florida Rule of Civil Procedure 1.420(e) to undisputed record activity.
PRECEDENTIAL VALUE	Published binding precedent of the Supreme Court of Florida
PARTIES	Gloriann Wilson, et al. v. Eva J. Salamon, M.D., et al.

TOPICS

- motions to dismiss
- civil procedure
- appellate procedure
- standard of review

PRACTICE AREAS

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether an order entered and filed to resolve a motion properly filed in good faith constitutes record activity under Florida Rule of Civil Procedure 1.420(e).
2. Whether trial courts may look behind record activity and determine subjectively whether an order or filing was passive or was calculated to move the case toward judgment.
3. Whether the Second District properly affirmed dismissal of the action for failure to prosecute.

HOLDINGS

1. A trial court order entered and filed to resolve a motion properly filed in good faith constitutes record activity that precludes dismissal for failure to prosecute under rule 1.420(e).
2. Courts should not look behind the face of the record to determine whether recorded activity was passive or active when applying rule 1.420(e); the rule establishes a bright-line inquiry into whether qualifying activity appears on the face of the record.
3. Dismissal under rule 1.420(e) was improper because the order granting the motion to appear pro hac vice was record activity appearing within the relevant period.

KEY QUOTATIONS

“We answer the question by holding that trial court orders that are entered and filed to resolve motions that have been properly filed in good faith should be treated as record activity precluding dismissal under rule 1.420(e) of the Florida Rules of Civil Procedure.” (at 364)

“This construction of the rule establishes a bright-line test that will ordinarily require only a cursory review of the record by a trial court.” (at 368)

“Accordingly, we quash the decision of the district court, answer the certified question as set out herein, and remand the cause to be considered in light of the analysis we have outlined in this opinion.” (at 369)

FACTUAL BACKGROUND

Wilson filed a medical-negligence action alleging that her daughter sustained birth-related injuries because of the negligence of Eva J. Salamon, M.D., and Bond Clinic, P.A. Following discovery and defense responses, Wilson's counsel filed a motion for another Massachusetts attorney to appear pro hac vice. The motion was granted by an order filed on April 4, 2002, after which no further record activity occurred before the defendants moved to dismiss for failure to prosecute. The Supreme Court focused on the existence of the order of court on the face of the record, rather than on whether the order actively advanced the case toward judgment.

PROCEDURAL HISTORY

Wilson filed a medical-negligence complaint, and the defendants answered. After discovery, Wilson's co-counsel filed a motion to appear pro hac vice; the motion was granted by an order filed on April 4, 2002. The defendants

later moved to dismiss for failure to prosecute, and the circuit court dismissed the action on November 27, 2002. The Second District affirmed, holding that the pro hac vice motion was insufficient record activity, and certified the question to the Supreme Court of Florida. The Supreme Court quashed the district court's decision and remanded for further proceedings consistent with its analysis.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The decision of the Second District Court of Appeal was quashed, and the cause was remanded for consideration in light of the Supreme Court's plain-meaning and bright-line analysis of rule 1.420(e).

CASES CITED

- Metropolitan Dade County v. Hall, 784 So. 2d 1087 (Fla. 2001)
- In re Fla. Rules of Civil Procedure, 187 So. 2d 598 (Fla. 1966)
- Gulf Appliance Distributors, Inc. v. Long, 53 So. 2d 706 (Fla. 1951)
- Moossun v. Orlando Reg'l Health Care, 826 So. 2d 945 (Fla. 2002)
- Toney v. Freeman, 600 So. 2d 1099 (Fla. 1992)
- Barnett Bank v. Fleming, 508 So. 2d 718 (Fla. 1987)
- Fuster-Escalona v. Wisotsky, 781 So. 2d 1063 (Fla. 2000)
- Del Duca v. Anthony, 587 So. 2d 1306 (Fla. 1991)
- In re Fla. Bar, Rules of Civil Procedure, 339 So. 2d 626 (Fla. 1976)
- Fla. Bar re Rules of Civil Procedure, 391 So. 2d 165 (Fla. 1980)
- Weiland v. State, 732 So. 2d 1044 (Fla. 1999)
- Haag v. State, 591 So. 2d 614 (Fla. 1992)
- State v. Gray, 654 So. 2d 552 (Fla. 1995)
- Eastern Elevator, Inc. v. Page, 263 So. 2d 218 (Fla. 1972)
- Anthony v. Schmitt, 557 So. 2d 656 (Fla. 2d DCA 1990)
- Nesbitt v. Community Health of South Dade, Inc., 566 So. 2d 1 (Fla. 3d DCA 1990)
- Martinez v. Fuenmayor, 533 So. 2d 935 (Fla. 3d DCA 1988)
- Sheen v. Time Inc. Magazine Co., 817 So. 2d 974 (Fla. 3d DCA 2002)
- Levine v. Kaplan, 687 So. 2d 863 (Fla. 5th DCA 1997)
- Smith v. De-Loach, 556 So. 2d 786 (Fla. 2d DCA 1990)
- Totura & Co. v. Williams, 754 So. 2d 671 (Fla. 2000)
- Lamb v. Matetzschk, 906 So. 2d 1037 (Fla. 2005)
- Wilson v. Salamon, 864 So. 2d 1122 (Fla. 2d DCA 2003)

