

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Andrew B. Schilling v. Walworth County Park & Planning  
Commission, et al.

805 F.2d 272 (7th Cir. 1986) · No. No. 85-1019 · Decided November 5, 1986

SUMMARY

The United States Court of Appeals for the Seventh Circuit held that the district court abused its discretion by sua sponte dismissing a pro se plaintiff’s employment-discrimination action for failure to participate in a telephone status conference. In the absence of a clear record of delay, contumacious conduct, or ineffective lesser sanctions, the district court was required to consider and explain why less severe sanctions were inadequate. The court reversed and remanded without addressing the merits of the underlying claims.

CASE DETAILS

|                       |                                                                                                                                                           |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Seventh Circuit                                                                                                    |
| WRITING FOR THE COURT | Cummings, Circuit Judge; Cudahy, Circuit Judge; Campbell, Senior District Judge, sitting by designation                                                   |
| JURISDICTION          | Federal                                                                                                                                                   |
| DECIDED               | November 5, 1986                                                                                                                                          |
| DOCKET                | No. 85-1019                                                                                                                                               |
| DISPOSITION           | reversed                                                                                                                                                  |
| PROCEDURAL POSTURE    | Appeal from the district court's sua sponte dismissal with prejudice for failure to participate in a telephone status conference and want of prosecution. |
| STANDARD OF REVIEW    | Abuse of discretion                                                                                                                                       |
| PRECEDENTIAL VALUE    | Published precedential federal appellate opinion                                                                                                          |
| PARTIES               | Andrew B. Schilling v. Walworth County Park & Planning Commission, et al.                                                                                 |

TOPICS

- sanctions
- civil procedure
- appellate procedure
- employment law

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the district court abused its discretion by sua sponte dismissing a relatively young action for failure to participate in one telephone status conference and alleged want of prosecution.
2. Whether dismissal with prejudice was permissible absent a clear record of delay, contumacious conduct, or ineffective prior sanctions and without consideration of lesser sanctions.
3. Whether the plaintiff's pro se status required the district court to provide additional warning or otherwise ensure fair and meaningful consideration before imposing dismissal.

## HOLDINGS

1. A district court abuses its discretion by dismissing an action without considering the adequacy of lesser sanctions when the record does not show clear delay, contumacious conduct, or ineffective prior sanctions.
2. When a pro se litigant has proceeded in good faith, failure to obtain counsel does not establish lack of prosecutive intent, and the district court should at least warn the litigant of the possible consequences of neglect before imposing dismissal in the first instance.

## KEY QUOTATIONS

*“We reverse the district court's dismissal of this case because of our conclusion that absent such matters as a clear record of delay, contumacious conduct, or ineffectiveness of prior sanctions, a district court abuses its discretion when it dismisses an action without consideration of the adequacy of lesser sanctions.” (805 F.2d at 272)*

*“A dismissal with prejudice is a harsh sanction which should usually be employed only in extreme situations, when there is a clear record of delay or contumacious conduct, or when other less drastic sanctions have proven unavailing.” (805 F.2d at 274)*

*“When a clear record of delay, contumacious conduct, or prior failed sanctions does not exist, the exercise of judicial discretion requires that the district court consider and explain the inappropriateness of lesser sanctions.” (805 F.2d at 277)*

## FACTUAL BACKGROUND

Schilling, proceeding pro se, alleged that Walworth County governmental bodies discharged him from his county planning, zoning, and sanitation position because of his ethnicity, age, and criticism of county government. He participated in two telephone status conferences and answered defendants' interrogatories, but discovery was not completed by the court's deadline. He failed to participate in a third telephone conference, apparently because he believed the date was tentative and had not received written notice, and the district court dismissed the case without prior warning or consideration of lesser sanctions.

## PROCEDURAL HISTORY

Schilling filed a pro se employment and civil-rights complaint in July 1983. After several status conferences and unresolved discovery matters, the district court dismissed the action sua sponte on November 29, 1984, after Schilling failed to participate in a scheduled November 20 telephone conference. The Seventh Circuit reversed, holding that the dismissal was an abuse of discretion because the record lacked clear delay, contumacious conduct, or ineffective prior sanctions, and the district court had not considered or explained why lesser sanctions were inadequate.

## DISPOSITION

reversed

## REMAND INSTRUCTIONS

The dismissal is reversed and the case is remanded for further proceedings. Circuit Rule 18 applies on remand. If further delays occur, the new trial judge should consider the entire history of the case, including the appeal, in selecting appropriate sanctions.

## CASES CITED

- Link v. Wabash Railroad, 370 U.S. 626 (1962)
- Beshear v. Weinzapfel, 474 F.2d 127 (7th Cir. 1973)
- Webber v. Eye Corp., 721 F.2d 1067 (7th Cir. 1983)
- Sandee Mfg. Co. v. Rohm & Hass Co., 298 F.2d 41 (7th Cir. 1962)
- Tolbert v. Leighton, 623 F.2d 585 (9th Cir. 1980)
- Gonzalez v. Firestone Tire & Rubber Co., 610 F.2d 241 (5th Cir. 1980)
- Cohen v. Carnival Cruise Lines, 782 F.2d 923 (11th Cir. 1986) (per curiam)
- Shea v. Donohoe Construction Co., 795 F.2d 1071 (D.C. Cir. 1986)
- Wojton v. Marks, 344 F.2d 222 (7th Cir. 1965)
- Hutter N. Trust v. Door County Chamber of Commerce, 467 F.2d 1075 (7th Cir. 1972)
- Faretta v. California, 422 U.S. 806 (1975)
- Tolliver v. Northrop Corp., 786 F.2d 316 (7th Cir. 1986)
- Zaddack v. A.B. Dick Co., 773 F.2d 147 (7th Cir. 1985)
- Childs v. Duckworth, 705 F.2d 915 (7th Cir. 1983)
- Madyun v. Thompson, 657 F.2d 868 (7th Cir. 1981)
- Camps v. C & P Telephone Co., 692 F.2d 120 (D.C. Cir. 1981)
- Glick v. Gutbrod, 782 F.2d 754 (7th Cir. 1986)
- Washington v. Walker, 734 F.2d 1237 (7th Cir. 1984)
- Schenck v. Bear, Stearns & Co., 583 F.2d 58 (2d Cir. 1978)
- Raiford v. Pounds, 640 F.2d 944 (9th Cir. 1981) (per curiam)
- Stevens v. Greyhound Lines, 710 F.2d 1224 (7th Cir. 1983)
- Locascio v. Teletype Corp., 694 F.2d 497 (7th Cir. 1982), cert. denied, 461 U.S. 906 (1983)

- Hughes v. Rowe, 449 U.S. 5 (1980) (per curiam)
- Bates v. Jean, 745 F.2d 1146 (7th Cir. 1984)
- Hudson v. Palmer, 468 U.S. 517 (1984)

---

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/seventh-circuit/1986/andrew-b-schilling-v-walworth-county-park-and-planning-c49nnuc0>