

COURT OF APPEALS FOR THE SIXTH APPELLATE DISTRICT OF TEXAS AT
TEXARKANA

Michelle M. Buerger v. Billy Long

Buerger v. Long, No. 06-25-00086-CV (Tex. App.—Texarkana Mar. 27, 2026) · No. 06-25-00086-CV · Decided
March 27, 2026

SUMMARY

The Texas Sixth Court of Appeals affirmed the dismissal of Michelle M. Buerger’s negligence action against Billy Long for want of prosecution. The court held that Buerger failed to exercise reasonable diligence, did not appear at the noticed dismissal hearing, and was not harmed by the trial court’s failure to hold a hearing on her motion to reinstate.

CASE DETAILS

COURT	Court of Appeals for the Sixth Appellate District of Texas at Texarkana
WRITING FOR THE COURT	Justice Charles van Cleef; Chief Justice Stevens; Justice van Cleef; Justice Rambin
JURISDICTION	Court of Appeals for the Sixth Appellate District of Texas at Texarkana
DECIDED	March 27, 2026
DOCKET	06-25-00086-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the dismissal of a negligence action for want of prosecution and denial of a motion to reinstate.
STANDARD OF REVIEW	A dismissal for want of prosecution is reviewed for clear abuse of discretion, with the central issue being whether the plaintiff exercised reasonable diligence. The denial of a motion to reinstate is reviewed for abuse of discretion. An alleged failure to hold a reinstatement hearing is subject to harmless-error review under Texas Rule of Appellate Procedure 44.1.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	Michelle M. Buerger v. Billy Long

TOPICS

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

PRACTICE AREAS

civil procedure

appellate procedure

torts

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by dismissing Buerger's negligence action for want of prosecution.
2. Whether the trial court abused its discretion or committed reversible error by denying Buerger's motion to reinstate without holding a reinstatement hearing.

HOLDINGS

1. The trial court did not abuse its discretion by dismissing Buerger's case for want of prosecution because the case had remained pending for years without service on Long or other prosecution, and Buerger failed to appear at a noticed dismissal hearing without establishing good cause to retain the case.
2. Any failure to hold a hearing on Buerger's motion to reinstate was harmless, and the trial court did not abuse its discretion by denying reinstatement because Buerger's stated reason for nonappearance did not establish that her failure was due to accident, mistake, or another reasonable explanation rather than intentional conduct or conscious indifference.

KEY QUOTATIONS

"A plaintiff has a duty to 'prosecut[e] the suit to a conclusion with reasonable diligence,' failing which a trial court may dismiss for want of prosecution." (3)

"The court shall reinstate the case upon finding after a hearing that the failure of the party or h[er] attorney was not intentional or the result of conscious indifference but was due to an accident or mistake or that the failure has been otherwise reasonably explained." (5)

"A failure to appear is not intentional or due to conscious indifference within the meaning of the rule merely because it is deliberate; it must also be without adequate justification." (6)

FACTUAL BACKGROUND

Buerger sued Long for negligence arising from a December 6, 2018 automobile accident. Although she filed the petition on December 17, 2020, she never served Long. After the trial court warned her in November 2024 that she needed to pursue the case, Buerger still did not serve Long and did not appear at the July 2025 dismissal hearing despite having notice and informing the court that she would be out of state for family obligations.

PROCEDURAL HISTORY

Buerger filed a pro se negligence suit against Long in 2020, but Long was never served. After retaining the case once with a warning that Buerger needed to pursue it, the trial court later notified her of a dismissal hearing. Buerger acknowledged notice but did not appear, and the trial court dismissed the case for want of prosecution. The trial court denied Buerger's motion to reinstate, and the court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- MacGregor v. Rich, 941 S.W.2d 74, 75 (Tex. 1997) (per curiam)
- Ransom v. Gibson, 553 S.W.3d 89, 93-94 (Tex. App.—Texarkana 2018, no pet.)
- Clark v. Yarbrough, 900 S.W.2d 406, 409 (Tex. App.—Texarkana 1995, writ denied)
- Johnson v. Hawkins, 255 S.W.3d 394, 397 (Tex. App.—Dallas 2008, pet. denied)
- Downer v. Aquamarine Operators, Inc., 701 S.W.2d 238, 241-42 (Tex. 1985)
- Tex. Soc., Daughters of the Am. Revolution, Inc. v. Est. of Hubbard, 768 S.W.2d 858, 862 (Tex. App.—Texarkana 1989, no writ)
- In re Levetz, No. 06-19-00086-CV, 2019 WL 5444158, at *2 (Tex. App.—Texarkana Oct. 24, 2019, orig. proceeding) (mem. op.)
- In re Conner, 458 S.W.3d 532, 534 (Tex. 2015) (per curiam) (orig. proceeding)
- In re Crawford, 560 S.W.3d 357, 364 (Tex. App.—Texarkana 2018, orig. proceeding)
- Gulf Coast Investment Corp. v. NASA 1 Business Center, 754 S.W.2d 152, 153 (Tex. 1988) (per curiam) (orig. proceeding)
- Keough v. Cyrus USA, Inc., 204 S.W.3d 1, 3-4 (Tex. App.—Houston [14th Dist.] 2006, pet. denied)
- Curnutt v. Conocophillips Co., 508 S.W.3d 641, 644 (Tex. App.—El Paso 2016, no pet.)
- Beames v. Hooks, No. 01-14-00103-CV, 2015 WL 162226, at *8 (Tex. App.—Houston [1st Dist.] Jan. 13, 2015, no pet.) (mem. op.)
- Preslar v. Garcia, No. 03-13-00449-CV, 2014 WL 824201, at *4 (Tex. App.—Austin Feb. 26, 2014, no pet.) (mem. op.)
- Dueitt v. Arrowhead Lakes Property Owners, Inc., 180 S.W.3d 733, 740 (Tex. App.—Waco 2005, pet. denied)
- Smith v. Babcock & Wilcox Construction Co., 913 S.W.2d 467, 468 (Tex. 1995) (per curiam)

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