

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)

OPINION

Michelle M. Buerger v. Billy Long

PER CURIAM.

In the Court of Appeals Sixth Appellate District of Texas at Texarkana No. 06-25-00086-CV MICHELLE M. BUERGER, Appellant V. BILLY LONG, Appellee On Appeal from the 62nd District Court Lamar County, Texas Trial Court No. 89989 Before Stevens, C.J., van Cleef and Rambin, JJ. Memorandum Opinion by Justice van Cleef

MEMORANDUM OPINION

In this appeal, Michelle M. Buerger argues that the trial court abused its discretion by dismissing her case for want of prosecution and by failing to reinstate her case. We find no abuse of discretion in the trial court's rulings on these matters. Accordingly, we affirm the trial court's dismissal order.

I. Factual and Procedural Background On December 17, 2020, Buerger sued Billy Long for negligence arising from an automobile accident occurring on December 6, 2018. Buerger's pro se petition was not served on Long. As a result, on September 18, 2024, the trial court sent Buerger notice of its intent to dismiss the case for want of prosecution after a November 14 hearing. At the November hearing, Buerger said, "I need [the lawsuit] retained. It has to do with . . . an insurance company, and it was just to preserve the statute of limitation. [The] [i]nsurance company was supposed to be settling with that suit" The trial court noted that Long had not been served, but it retained the case with a warning to Buerger "to either pursue it or [retain] an attorney to help." Before concluding the hearing, the trial court told Buerger it would "retain it for [her], but it will come up in a year. At that point, something needs to be done with it" Still, Buerger did not serve Long, and there was no movement in the case. Accordingly, on June 3, 2025, the trial court sent Buerger another notice of its intent to dismiss the case for want of prosecution after a July 23, 2025, hearing. The trial court's notice warned Buerger that failure to appear at the hearing would result in dismissal of the case. Even so, Buerger informed the trial court on July 15 that she did not intend to appear at the July 23 hearing because she was 2 out of the state due to family obligations. Because Buerger did not appear at the July 23 dismissal hearing, the trial court dismissed the case for want of prosecution.¹ On August 22, Buerger filed a motion to reinstate the case on the trial court's docket, which simply stated she was unable to attend the dismissal hearing. The motion was denied by the trial court.

II. Standard of Review "We review a dismissal for want of prosecution under a clear abuse of discretion standard; the central issue is whether the plaintiff[] exercised reasonable diligence." *MacGregor v. Rich*, 941 S.W.2d 74, 75 (Tex. 1997) (per curiam). Similarly, "[a] trial court's denial of a reinstatement motion is addressed to the sound discretion of the trial court, and a reviewing court will not disturb it absent a showing of abuse." *Ransom*, 553 S.W.3d at 93 (quoting *Clark v. Yarbrough*, 900 S.W.2d 406, 409 (Tex. App.—Texarkana 1995, writ denied)). "A trial court abuses its discretion when it acts in an arbitrary and unreasonable manner, or when it acts without reference to any guiding principles." *Johnson v. Hawkins*, 255 S.W.3d 394, 397 (Tex. App.—Dallas 2008, pet. denied) (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985)).

III. Analysis Buerger's pro se brief admits that Long has never been served with the 2020 petition. Even so, she argues that the trial court erred by dismissing her case because she "relied on the 1 Although not a point of error, Buerger questions whether the dismissal was with or without prejudice. Because the order specifies that it was a dismissal for want of prosecution, it shows that there was not a merits-based decision and that the dismissal was, therefore, without prejudice. See *Ransom v. Gibson*, 553 S.W.3d 89, 94 (Tex. App.—Texarkana 2018, no pet.) (citing *Tex. Soc., Daughters of the Am. Revolution, Inc. v. Est. of Hubbard*, 768 S.W.2d 858, 862 (Tex. App.—Texarkana 1989, no writ)).

3 trial court's explicit oral allowance" of a "one-year extension" at the November 2024 hearing. Although the trial court warned Buerger that the dismissal would "come up in a year" again, nothing shows that the trial court gave Buerger permission to do nothing for a year. Rather, the record shows that the trial

court warned Buerger that Long had not been served and that something needed to be done. “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.” *In re Levetz*, No. 06-19-00086- CV, 2019 WL 5444158, at *2 (Tex. App.—Texarkana Oct. 24, 2019, orig. proceeding) (mem. op.) (alteration in original) (quoting *In re Conner*, 458 S.W.3d 532, 534 (Tex. 2015) (per curiam) (orig. proceeding)). “A trial court may dismiss a suit for want of prosecution either under its inherent power or pursuant to Rule 165a of the Texas Rules of Civil Procedure.” *Id.* (quoting *In re Crawford*, 560 S.W.3d 357, 364 (Tex. App.—Texarkana 2018, orig. proceeding) (citing *In re Conner*, 458 S.W.3d at 534)). “Any case not disposed of within time standards promulgated by the Supreme Court under its Administrative Rules may be placed on a dismissal docket.” TEX. R. CIV. P. 165a(2). Further, “[a] case may be dismissed for want of prosecution on failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice.” TEX. R. CIV. P. 165a(1). “At the dismissal hearing, the court must dismiss for want of prosecution unless there is good cause for the case to be maintained on the docket.” *Id.* Buerger’s petition was filed in 2020. Under Rule 6.1 of the Texas Rules of Judicial Administration, the trial court was encouraged to dispose of the case within no more than 4 eighteen months. See TEX. R. JUD. ADMIN. 6.1. That time had long since passed without Long even being served. Moreover, Buerger sought affirmative relief by her petition but failed to appear for the dismissal hearing even though she had notice of it. Because she did not appear for the hearing, nothing shows that there was good cause to retain the matter on the court’s docket. In her pro se brief, Buerger does not deny her failure to appear for the July 2025 dismissal hearing, nor does she challenge the trial court’s inherent authority to dismiss the case based on inattentive prosecution. Consequently, nothing shows that the trial court abused its discretion by dismissing Buerger’s case for want of prosecution.² We overrule Buerger’s first point of error. Buerger also filed a motion to reinstate the case. When a party seeking reinstatement meets Rule 165a(3) prerequisites, the trial court must set a hearing as soon as practicable. See TEX. R. CIV. P. 165a(3); *Gulf Coast Inv. Corp. v. NASA 1 Bus. Ctr.*, 754 S.W.2d 152, 153 (Tex. 1988) (per curiam) (orig. proceeding). Pursuant to Rule 165a(3), a motion to reinstate the case “shall be served on each attorney of record and each party not represented by an attorney whose address is shown on the docket or in the papers on file.” TEX. R. CIV. P. 165a(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.” *Id.* “The movant for reinstatement bears the burden to produce evidence supporting the motion.” *Ransom*, 553 S.W.3d at 2. Although Buerger acknowledges that she received notice of the July dismissal hearing, she raises a general due process complaint for the first time on appeal. Buerger’s due process complaint is unpreserved. See TEX. R. APP. P. 33.1. Even so, we note that the trial court afforded her the process she was due by sending notice of the hearing with a warning that failure to appear would result in dismissal of the case. 5 93(quoting *Keough v. Cyrus USA, Inc.*, 204 S.W.3d 1, 3–4 (Tex. App.—Houston

[14th Dist.] 2006, pet. denied)). Here, because Buerger had not served Long, her motion for reinstatement was not served on any opposing party. Yet, even assuming that Buerger met the requirements of Rule 165a(3), the failure of a trial court to hold a hearing on a motion to reinstate a case is subject to a harmless error analysis. See TEX. R. APP. P. 44.1; see also *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 Prop. Owners, Inc.*, 180 S.W.3d 733, 740 (Tex. App.—Waco 2005, pet denied). Under Rule 44.1(a) of the Texas Rules of Appellate Procedure, No judgment may be reversed on appeal on the ground that the trial court made an error of law unless the court of appeals concludes that the error complained of:

(1) probably caused the rendition of an improper judgment; or

(2) probably prevented the appellant from properly presenting the case

to the court of appeals. TEX. R. APP. P. 44.1(a). Here, nothing shows that the failure to hold a hearing on the motion to reinstate would have led to a different result or would have aided Buerger in the presentation of her appeal to this Court. Reinstatement was only required if Buerger’s failure to appear at the July dismissal hearing was not intentional or the result of conscious indifference. “A failure to appear is not 6 intentional or due to conscious indifference within the meaning of the rule merely because it is deliberate; it must also be without adequate justification.” *Ransom*, 553 S.W.3d at 93 (quoting *Smith v. Babcock & Wilcox Const. Co.*, 913 S.W.2d 467, 468 (Tex. 1995) (per curiam)). “Proof of such justification—accident, mistake or other reasonable explanation—negates the intent or conscious indifference for which reinstatement can be denied.” *Id.* (quoting *Smith*, 913 S.W.2d at 468). “Whether the party’s conduct was intentional or the result of conscious indifference is a question of fact to be determined by the trial court in its discretion.” *Id.* (quoting *Clark*, 900 S.W.2d at 409). Buerger was notified of the July 23, 2025, dismissal hearing on June 3. The body of Buerger’s motion to reinstate simply stated that she was not in town for the dismissal hearing. As a result, it shows that Buerger knew about the July dismissal hearing but chose not to appear. Even if the trial court had held a hearing in which Buerger could present the facts recited in her motion to reinstate, nothing shows that the result would be different since the trial court was free to determine that Buerger’s failure to appear due to “family obligations” was intentional or the result of conscious indifference. In light of these facts, we do not find that Buerger was harmed by the trial court’s lack of a hearing on her motion to reinstate the case. See TEX. R. APP. P. 44.1(a). We overrule Buerger’s second point of error. 7 IV. Conclusion We affirm the trial court’s dismissal order. Charles van Cleef Justice Date Submitted: March 16, 2026 Date Decided: March 27, 2026 8