

SUPREME COURT OF SOUTH DAKOTA

Jenco, Inc. v. United Fire Group, 2003 SD 79

666 N.W.2d 763 (2003) · No. No. 22493 · Decided July 9, 2003

SUMMARY

The Supreme Court of South Dakota affirmed dismissal with prejudice of Jenco, Inc.'s breach-of-insurance-contract action for failure to prosecute and failure to comply with an order requiring substitution of counsel. The court held that Jenco did not establish good cause for its approximately two-and-one-half-year period of inactivity and that the trial court acted within its discretion. The court also affirmed denial of Jenco's motion for reconsideration.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Sabers, Justice; Gilbertson, Chief Justice; Konen kamp, Justice; Meierhenry, Justice; Lieberman, Circuit Judge, sitting for Zinter, Justice
JURISDICTION	South Dakota
DECIDED	July 9, 2003
DOCKET	No. 22493
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jenco appealed the trial court's dismissal with prejudice of its insurance-breach action for failure to prosecute and failure to comply with a court order requiring substitute counsel, as well as the denial of its motion for reconsideration.
STANDARD OF REVIEW	A dismissal for failure to prosecute and the denial of reconsideration are reviewed for abuse of discretion. The court will not reverse if a judicial mind, in view of the law and circumstances, could reasonably have reached the challenged conclusion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jenco, Inc., successor to St. Goliard's Investment Co., a South Dakota Corporation, d/b/a Happy Jack's East v. The United Fire Group

TOPICS

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by dismissing Jenco's action with prejudice for failure to prosecute under SDCL 15-11-11 and SDCL 15-6-41(b).
2. Whether the trial court abused its discretion by denying Jenco's motion for reconsideration based on its contention that the allegedly missing witness was available.

HOLDINGS

1. The trial court did not abuse its discretion by dismissing Jenco's action with prejudice. Jenco failed to show good cause for approximately two and one-half years of inactivity and failed to comply with the order to obtain substitute counsel.
2. The trial court did not abuse its discretion by denying Jenco's motion for reconsideration.

KEY QUOTATIONS

"As we noted in Storm, a court order is not an "invitation, request or even [a] demand; they are mandatory. Those who totally ignore them ... should not be heard to complain that a sanction was too severe."" (666 N.W.2d at 768)

FACTUAL BACKGROUND

Approximately \$13,000 in cash was stolen from a casino operated by Jenco, and Jenco asserted that casino employee Dianne Iverson was involved. Jenco terminated Iverson, submitted an employee-dishonesty insurance claim to United Fire, and sued after United Fire denied the claim. After the trial court ordered Jenco to obtain substitute counsel because its attorney had a conflict of interest, Jenco took no action for approximately two and one-half years and did not obtain substitute counsel until shortly before the dismissal hearing.

PROCEDURAL HISTORY

Jenco filed an insurance claim after cash was stolen from its casino and sued United Fire after the insurer denied the claim. After a status hearing, the trial court ordered Jenco to obtain new counsel because its attorney had a conflict of interest. Jenco took no action for approximately two and one-half years, after which United Fire moved to dismiss. The trial court dismissed the action with prejudice under SDCL 15-11-11 and SDCL 15-6-41(b), and denied reconsideration. The South Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Devitt v. Hayes, 1996 SD 71, 551 N.W.2d 298
- Rosen's, Inc. v. Juhnke, 513 N.W.2d 575 (S.D. 1994)
- Modrow v. JP Foodservice, Inc., 656 N.W.2d 389 (Minn. 2003)
- Dakota Cheese Inc. v. Taylor, 525 N.W.2d 713 (S.D. 1995)
- Holmoe v. Reuss, 403 N.W.2d 30 (S.D. 1987)
- Annett v. American Honda Motor Co., Inc., 548 N.W.2d 798 (S.D. 1996)
- Reed v. Heath, 383 N.W.2d 873 (S.D. 1986)
- Swenson v. Sanborn County Farmers Union Oil Co., 1999 SD 61, 594 N.W.2d 339
- Storm v. Durr, 2003 SD 6, 657 N.W.2d 34
- Schwartz v. Palachuk, 1999 SD 100, 597 N.W.2d 442
- Sowards v. Hills Materials Co., 521 N.W.2d 649 (S.D. 1994)
- Upper Plains Contracting Inc. v. Pepsi Americas, 2003 SD 3, 656 N.W.2d 323
- Roso v. Henning, 1997 SD 82, 566 N.W.2d 136
- International Union of Operating Engineers Local No. 49 v. Aberdeen School District No. 6-1, 463 N.W.2d 843 (S.D. 1990)
- London v. Adams, 1998 SD 41, 578 N.W.2d 145
- Opp v. Nieuwsma, 458 N.W.2d 352 (S.D. 1990)
- Simpson v. C & R Supply, Inc., 1999 SD 117, 598 N.W.2d 914