

FLORIDA FIFTH DISTRICT COURT OF APPEAL

Doris Sheppard v. Bruce Barman and Maureen Barman

Sheppard v. Barman · No. 5D2024-2001 · Decided December 19, 2025

SUMMARY

The Florida Fifth District Court of Appeal affirmed the dismissal of Doris Sheppard’s personal injury action for failure to prosecute under Florida Rule of Civil Procedure 1.420(e). In a special concurrence, Judge Edwards discussed whether the filing of a proper notice for trial immunizes a case from dismissal when the trial court has not set a trial date, noting tension between the rule’s mandatory language and existing Florida case law. The concurrence suggested that this unresolved tension would benefit from clarification.

CASE DETAILS

COURT	Florida Fifth District Court of Appeal
WRITING FOR THE COURT	Per curiam; Eisnaugle, J.; Kilbane, J.; Edwards, J.
JURISDICTION	Florida Fifth District Court of Appeal
DECIDED	December 19, 2025
DOCKET	5D2024-2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order denying rehearing and an initial order dismissing a personal injury action for failure to prosecute.
PRECEDENTIAL VALUE	Published opinion; precedential status identified as published, although the substantive discussion appears in a special concurrence.
PARTIES	Doris Sheppard v. Bruce Barman, Maureen Barman

TOPICS

- civil procedure
- appellate procedure
- statutory interpretation
- plain meaning rule
- preservation of error

PRACTICE AREAS

- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court properly dismissed the personal injury action for failure to prosecute under Florida Rule of Civil Procedure 1.420(e).
2. Whether the filing of a notice for trial, without subsequent action by the trial court setting the case for trial, precluded dismissal for failure to prosecute.

HOLDINGS

1. The Fifth District affirmed the trial court's orders dismissing the action for failure to prosecute and denying rehearing.

KEY QUOTATIONS

“Applying Rule 1.420(e) literally, according to its clear language, the trial court correctly dismissed the case, even though the statute of limitations had likely run.”

“Once a party files a proper Rule 1.440(b) notice that a matter is ready for trial, it is the court’s duty to set the cause for trial.”

“Failure of the trial court to set the case for trial precludes dismissal for failure to prosecute despite the lack of record activity.”

“Thus, despite the mandatory language in Rule 1.420 otherwise requiring dismissal, given that Appellant filed a notice for trial and the trial court did not set the case for trial, one could conclude that application of the unbroken line of cases, barred the trial court from dismissing Appellant’s case for lack of prosecution.”

FACTUAL BACKGROUND

Sheppard filed a personal injury action, and the record contained a complaint and an answer, making the case at issue. No record activity occurred during the ten months preceding the trial court's notice of intent to dismiss or during the sixty days following that notice. Sheppard's counsel did not file a written showing of good cause at least five days before the dismissal hearing, although a notice for trial had previously been filed and the trial court had not set the case for trial.

PROCEDURAL HISTORY

The Circuit Court for Citrus County dismissed Sheppard's personal injury case for failure to prosecute under Florida Rule of Civil Procedure 1.420(e), after finding no record activity during the relevant periods and no timely written showing of good cause. The trial court denied rehearing. Sheppard appealed, and the Fifth District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Mikos v. Sarasota Cattle Co., 453 So. 2d 402 (Fla. 1984)

- *Fishe & Kleeman, Inc. v. Aquarius Condo. Ass'n*, 524 So. 2d 1012 (Fla. 1988)
- *Cabrera v. Pazos, Larrinaga & Taylor, P.A.*, 922 So. 2d 422 (Fla. 2d DCA 2006)
- *Howland Feed Mill, Inc. v. Hart*, 774 So. 2d 962 (Fla. 1st DCA 2001)
- *Young v. Mobile Dental Health, Inc.*, 730 So. 2d 766 (Fla. 2d DCA 1999)
- *Gen. Guar. Ins. Co. v. Bolivar*, 460 So. 2d 1011 (Fla. 2d DCA 1984)
- *Reyes v. Reeves Se. Corp.*, 895 So. 2d 1274 (Fla. 2d DCA 2005)
- *Bolt v. Smith*, 594 So. 2d 864 (Fla. 5th DCA 1992)
- *Citimortgage, Inc. v. Hill*, 140 So. 3d 703 (Fla. 1st DCA 2014)
- *Chemrock Corp. v. Tampa Elec. Co.*, 71 So. 3d 786 (Fla. 2011)
- *Puryear v. State*, 810 So. 2d 901 (Fla. 2002)
- *Campbell v. State*, 288 So. 3d 739 (Fla. 5th DCA 2019)
- *Stevens v. State*, 226 So. 3d 787 (Fla. 2017)

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