

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Caruso v. Pearce, 223 W. Va. 544

678 S.E.2d 50 (2009) · No. No. 34144 · Decided May 5, 2009

SUMMARY

The Supreme Court of Appeals of West Virginia reversed a circuit court's dismissal of an automobile-accident action under West Virginia Rule of Civil Procedure 41(b) for lack of activity. The court held that dismissal was an abuse of discretion because the inactivity was scarcely more than one year, the case involved multiple third-party claims, and the circuit court had not entered the mandatory Rule 16(b) scheduling order. Dissents argued that the plaintiff had failed to prosecute the case for nearly three years despite available discovery procedures.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Ketchum; Chief Justice Benjamin; Justice Davis; Justice McHugh; Justice Workman; Judge John W. Hatcher, Jr., sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	May 5, 2009
DOCKET	No. 34144
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiff appealed the Circuit Court of Kanawha County's dismissal of her civil action under West Virginia Rule of Civil Procedure 41(b) for lack of activity and failure to prosecute.
STANDARD OF REVIEW	Abuse of discretion. Reversal is proper only upon a clear showing that the circuit court abused its discretion.
PRECEDENTIAL VALUE	Published West Virginia Supreme Court of Appeals opinion; precedential.
PARTIES	Jennifer L. Caruso v. Brian N. Pearce, P&T Trucking, Incorporated, Quality Machine Co., Inc., Garry K. Knotts, Joyce K. Hall

TOPICS

civil procedure

appellate procedure

standard of review

sanctions

PRACTICE AREAS

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by dismissing the action under West Virginia Rule of Civil Procedure 41(b) for inactivity and failure to prosecute.
2. Whether West Virginia Rule of Civil Procedure 16(b) requires a trial court to enter a scheduling order establishing deadlines for joinder, amendment of pleadings, motions, discovery, and other pretrial matters.
3. Whether the plaintiff demonstrated good cause and the defendants failed to show prejudice sufficient to justify dismissal with prejudice.

HOLDINGS

1. West Virginia Rule of Civil Procedure 16(b) requires active judicial management and mandates that a trial court enter a scheduling order establishing time frames for joinder of parties, amendment of pleadings, completion of discovery, filing of dispositive motions, and generally guiding the case toward a prompt, fair, and cost-effective resolution.
2. The circuit court abused its discretion by dismissing the action under Rule 41(b); dismissal with prejudice for failure to prosecute or inactivity is appropriate only in flagrant cases, and the approximately one-year period of inactivity, considered alongside the absence of a scheduling order and the lack of substantial prejudice, did not warrant dismissal.

KEY QUOTATIONS

“We therefore hold that Rule 16(b) requires active judicial management of a case, and mandates that a trial court “shall ... enter a scheduling order” establishing time frames for the joinder of parties, the amendment of pleadings, the completion of discovery, the filing of dispositive motions, and generally guiding the parties toward a prompt, fair and cost-effective resolution of the case.” (at 55)

“Because dismissing an action for failure to prosecute is such a harsh sanction, dismissal with prejudice is appropriate only in “flagrant” cases.” (at 56)

“Considering all of these factors, including the absence of a mandatory scheduling order from the circuit court, this Court finds that, in this case, the plaintiff’s interest in moving forward with her claim outweighs concerns of judicial efficiency and any prejudice that the defendants and third-party defendants may have suffered.” (at 56)

FACTUAL BACKGROUND

Jennifer L. Caruso alleged that she was injured in a November 8, 2002 automobile accident caused by the negligence of Brian N. Pearce and P&T Trucking, Inc. She filed suit on October 12, 2004, answered defendants’ interrogatories in March 2005, and thereafter did not initiate activity in the case. Other parties pursued third-party claims and discovery through July 13, 2006, but the circuit court entered no Rule 16(b) scheduling order.

The court dismissed the action after approximately one year of recorded inactivity, and the Supreme Court concluded that the inactivity was not sufficiently egregious to justify dismissal with prejudice.

PROCEDURAL HISTORY

Caruso filed a negligence action arising from an automobile accident. The defendants answered, filed third-party complaints, and conducted discovery, but Caruso did not initiate further activity after responding to interrogatories in March 2005. After more than one year without a recorded order or proceeding, the circuit clerk issued a Rule 41(b) dismissal notice, and the circuit court dismissed the case on October 12, 2007. The Supreme Court of Appeals of West Virginia reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings following reversal of the October 12, 2007 dismissal order.

CASES CITED

- *Dimon v. Mansy*, 198 W. Va. 40, 479 S.E.2d 339 (1996)
- *Covington v. Smith*, 213 W. Va. 309, 582 S.E.2d 756 (2003)
- *Intercity Realty Co. v. Gibson*, 154 W. Va. 369, 175 S.E.2d 452 (1970)
- *Arlan's Dept. Store of Huntington, Inc. v. Conaty*, 162 W. Va. 893, 253 S.E.2d 522 (1979)
- *State ex rel. Pritt v. Vickers*, 214 W. Va. 221, 588 S.E.2d 210 (2003)
- *Elliott v. Schoolcraft*, 213 W. Va. 69, 576 S.E.2d 796 (2002) (per curiam)
- *Hoover v. Moran*, 222 W. Va. 112, 662 S.E.2d 711 (2008)
- *Law v. Monongahela Power Co.*, 210 W. Va. 549, 558 S.E.2d 349 (2001)
- *Safouane v. Fleck*, 226 Fed. Appx. 753 (9th Cir. 2007)
- *Bielinski v. Casual Corner Group, Inc.*, No. 99 Civ. 693 (TPG) (S.D.N.Y. Aug. 30, 2002)
- *Orduna v. Texas Comm'n on Alcohol & Drug Abuse*, 220 Fed. Appx. 249 (5th Cir. 2007)
- *M & H Cosmetics, Inc. v. Alfin Fragrances, Inc.*, 102 F.R.D. 265 (E.D.N.Y. 1984)
- *Salmon v. City of Stuart*, 194 F.2d 1004 (5th Cir. 1952)
- *Plummer v. Workers Compensation Div.*, 209 W. Va. 710, 551 S.E.2d 46 (2001)
- *Gaither v. City Hosp., Inc.*, 199 W. Va. 706, 487 S.E.2d 901 (1997)