

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Anderson v. King, 210 W. Va. 170

556 S.E.2d 815 (2001) · No. No. 29286 · Decided November 27, 2001

SUMMARY

The Supreme Court of Appeals of West Virginia held that the circuit court abused its discretion by refusing to reinstate Lee Roy Anderson’s legal malpractice action after dismissing it for failure to prosecute. The court found that Anderson had shown good cause because he had actively prosecuted the case, several trial continuances were court-ordered, and the subsequent delay was connected to his attorney’s departure; the case was reversed and remanded for reinstatement.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	November 27, 2001
DOCKET	No. 29286
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Anderson appealed the Circuit Court of Calhoun County's refusal to reinstate his legal-malpractice action after it had been dismissed for failure to prosecute.
STANDARD OF REVIEW	Reinstatement of an action dismissed for failure to prosecute is reviewed for clear abuse of discretion.
PRECEDENTIAL VALUE	Published West Virginia Supreme Court of Appeals opinion; precedential.
PARTIES	Lee Roy Anderson v. Wayne King

TOPICS

- civil procedure
- appellate procedure
- standard of review
- sanctions
- professional negligence

PRACTICE AREAS

- civil procedure
- appellate procedure
- professional negligence
- real estate

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by refusing to reinstate an action dismissed for failure to prosecute.
2. Whether Anderson demonstrated good cause adequately excusing the delay in prosecuting the action under West Virginia Rule of Civil Procedure 41(b).
3. Whether reinstatement should nevertheless be denied because it would substantially prejudice the appellee.

HOLDINGS

1. A plaintiff seeking reinstatement under West Virginia Rule of Civil Procedure 41(b) must move within three terms after entry of the dismissal order; Anderson satisfied that requirement by filing his motion within days of the initial dismissal.
2. Anderson demonstrated good cause adequately excusing the delay because he had substantially prosecuted the action for four years, the trial had repeatedly been continued by the court, and the later delay followed the departure of the attorney handling the matter.
3. The asserted absence of Anderson's former wife did not establish substantial prejudice sufficient to defeat reinstatement because the material issues could largely be resolved through documentary evidence.

KEY QUOTATIONS

“In this Court's view, all this shows that over a period of four years, from September 1991 through September 1995, Mr. Anderson did prosecute the action and apparently was prepared to try the issues raised, but was frustrated in completing the prosecution by the actions of the court itself.” (at 817)

“Under these overall peculiar circumstances of this case, Mr. Anderson's conduct cannot be considered flagrant, and where he did advance good reasons for not prosecuting the case, this Court believes that the circuit judge clearly abused his discretion and should have reinstated this action.” (at 818)

FACTUAL BACKGROUND

Anderson alleged that attorney Wayne King negligently failed to identify judgment liens during a title search, causing Anderson to lose property after foreclosure proceedings. Anderson filed suit in 1991 and conducted substantial discovery, including depositions, requests for admissions, interrogatories, and document requests. The circuit court repeatedly continued the trial sua sponte, after which Anderson's attorney left the representing firm and no further action was taken for approximately a year before dismissal. Anderson promptly sought reinstatement after learning of the dismissal.

PROCEDURAL HISTORY

Anderson filed the malpractice action in 1991 and engaged in substantial discovery. The circuit court continued trial on several occasions and dismissed the case in June 1997 after more than a year without further proceedings. Anderson timely moved for reinstatement, but after a hearing the circuit court denied the motions

and entered a second order of dismissal in September 2000. The Supreme Court of Appeals of West Virginia reversed and remanded with directions to reinstate the action.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Circuit Court of Calhoun County was directed to reinstate the case on its docket.

CASES CITED

- Dimon v. Mansy, 198 W. Va. 40, 46, 479 S.E.2d 339, 345 (1996)
- Gray v. Johnson, 165 W. Va. 156, 267 S.E.2d 615 (1980)
- Brent v. Board of Trustees of Davis & Elkins College, 173 W. Va. 36, 311 S.E.2d 153 (1983)