

SUPREME COURT OF UTAH

Holmes v. Cannon

2016 UT 42 (Utah 2016) · No. No. 20150238 · Decided September 8, 2016

SUMMARY

The Utah Supreme Court overruled *Panos v. Smith’s Food & Drug Centers, Inc.*, holding that involuntary dismissals are presumptively with prejudice under Utah Rule of Civil Procedure 41(b) unless the court specifies otherwise or an exception applies. The court held that a dismissal for failure to prosecute that did not specify dismissal without prejudice operated as a dismissal with prejudice. The court declined to apply its ruling prospectively because the appellee had not demonstrated justified reliance on *Panos*.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Durham; Chief Justice Durrant; Associate Chief Justice Lee; Justice Himonas; Justice Pearce
JURISDICTION	Utah
DECIDED	September 8, 2016
DOCKET	No. 20150238
DISPOSITION	reversed
PROCEDURAL POSTURE	Interlocutory appeal from the district court’s denial of a Utah Rule of Civil Procedure 12(b)(6) motion to dismiss a second action based on the asserted preclusive effect of an earlier failure-to-prosecute dismissal.
STANDARD OF REVIEW	De novo review for correctness of the district court’s interpretation of the Utah Rules of Civil Procedure.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Utah
PARTIES	Terry Holmes v. Chris Cannon

TOPICS

- civil procedure
- interlocutory appeal
- appellate procedure
- statutory interpretation
- plain meaning rule

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an involuntary dismissal for failure to prosecute is presumptively with prejudice under Utah Rule of Civil Procedure 41(b) when the dismissal order is silent as to prejudice and does not expressly invoke Rule 41(b).
2. Whether the court should apply its overruling of *Panos v. Smith's Food & Drug Centers, Inc.* only prospectively because the appellee relied on that decision.

HOLDINGS

1. An involuntary dismissal is presumptively with prejudice unless the judge otherwise specifies that it is without prejudice or the case falls within a Rule 41(b) exception, including lack of jurisdiction, improper venue, or lack of an indispensable party. This rule applies even when the dismissal order does not expressly identify Rule 41(b).
2. The appellee was not entitled to prospective-only application of the court's ruling because he failed to assert or demonstrate that he had justifiably relied on *Panos*.

KEY QUOTATIONS

“Therefore, we overrule Panos and hold that involuntary dismissals are presumptively dismissed with prejudice unless the judge otherwise specifies or the case falls under an exception.” (¶ 14)

“Today we overrule Panos v. Smith’s Food & Drug Centers, Inc., 913 P.2d 363 (Utah Ct. App. 1996), and hold that the plain text of Utah Rule of Civil Procedure 41(b) controls whether a case is dismissed with or without prejudice.” (¶ 21)

FACTUAL BACKGROUND

The underlying litigation arose from alleged tort and contract violations associated with an investment. After the action remained inactive for several years, the district court ordered the parties to appear and show cause why the case should not be dismissed for failure to prosecute. Neither party appeared, and the court entered a dismissal order that did not specify whether the dismissal was with prejudice or identify Rule 41(b). Cannon filed a new action asserting the same claims against the same defendants.

PROCEDURAL HISTORY

Chris Cannon filed an action alleging tort and contract violations. After the case languished and neither side appeared at a show-cause hearing, the district court dismissed the case without specifying whether the dismissal was with or without prejudice or identifying the governing rule. Cannon then filed a new action asserting the same claims. The defendants moved to dismiss under Rule 12(b)(6), arguing that the earlier dismissal operated with prejudice under Rule 41(b). The district court denied the motion based on *Panos v. Smith's Food & Drug Centers, Inc.*, and the Utah Supreme Court granted an interlocutory appeal.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The district court should dismiss the later action with prejudice because the prior involuntary dismissal was presumptively with prejudice under Rule 41(b).

CASES CITED

- Panos v. Smith's Food & Drug Centers, Inc., 913 P.2d 363 (Utah Ct. App. 1996)
- Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne, 2012 UT 66, 289 P.3d 502
- Alvarez v. Galetka, 933 P.2d 987 (Utah 1997)
- Donahue v. Smith, 2001 UT 46, 27 P.3d 552
- Wilson v. Lambert, 613 P.2d 765 (Utah 1980)
- Link v. Wabash Railroad Co., 370 U.S. 626 (1962)
- Monarrez v. Utah Department of Transportation, 2016 UT 10, 368 P.3d 846
- Carter v. Lehi City, 2012 UT 2, 269 P.3d 141
- Low v. City of Monticello, 2002 UT 90, 54 P.3d 1153
- Meadow Fresh Farms, Inc. v. Utah State University Department of Agriculture & Applied Science, 813 P.2d 1216 (Utah Ct. App. 1991)
- Ted Knodel v. Terry Holmes, Civ. No. 040918738 (Utah 3d Dist. Ct. Aug. 22, 2013)
- Simler v. Chilel, 2016 UT 23, ¶ 9