

2018 IL App (2d) 170882-U
No. 2-17-0882
Order filed June 4, 2018

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

WK DEVELOPMENT, LLC,)	Appeal from the Circuit Court
)	of Jo Daviess County.
Plaintiff-Appellant,)	
)	
v.)	No. 17-L-7
)	
PEGASUS PROPERTIES, LLC, and AUTO-)	
OWNERS INSURANCE COMPANY,)	Honorable
)	William A. Kelly,
Defendants-Appellees.)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not abuse its discretion in dismissing plaintiff's case, with prejudice, for want of prosecution where case had been dismissed for want of prosecution previously and plaintiff failed to appear for hearings.
- ¶ 2 Plaintiff, WK Development, LLC, appeals an order of the circuit court of Jo Daviess County dismissing its complaint, with prejudice, due to want of prosecution. For the reasons that follow, we affirm. Defendants have filed two motions for leave to cite additional authority; both are granted.

¶ 3 On April 5, 2017, this case was transferred from the circuit court of Cook County to the circuit court of Jo Daviess County based on considerations of proper venue. Defendants, Pegasus Properties, LLC, and Auto-Owners Insurance Company, filed a motion to dismiss for want of prosecution on August 3, 2017. Plaintiff did not file a response to the motion and does not controvert the allegations contained in it. The motion to dismiss alleged as follows.

¶ 4 On December 26, 2012, plaintiff filed an action against Auto-Owners in Jo Daviess County seeking a declaratory judgment, which “arose from an alleged June 2011 incident involving [plaintiff] and an Auto-Owners insured company, Pegasus Properties.” Auto-Owners filed a motion to dismiss “absent a finding of liability in the underlying tort action.” Plaintiff “failed to file a response brief and/or appear for hearing on said motion [and] the case was dismissed without prejudice by” the circuit court of Jo Daviess County on February 13, 2014.

¶ 5 On June 23, 2014, plaintiff filed an action against Pegasus in Jo Daviess County. Plaintiff failed to appear on two separate occasions. This case was dismissed for want of prosecution on November 13, 2014.

¶ 6 On August 5, 2015, plaintiff refiled this case against both defendants in Cook County. It was dismissed for want of prosecution on October 1, 2015, and reinstated on October 29, 2015, on plaintiff’s motion. Auto-Owners then filed another motion to dismiss the case as pertained to it, pending the outcome of tort litigation between plaintiff and Pegasus. This motion was granted by the Cook County circuit court on April 29, 2016.

¶ 7 Pegasus then filed a motion to dismiss for improper venue or, alternatively, to transfer the case to Jo Daviess County under *forum non conveniens*. The latter request was granted by the Cook County circuit court on August 9, 2016 (the case was not actually transferred until the following April). The case was put on the “progress call” of the Jo Daviess court for June 8,

2017. The motion then states—on information and belief—that plaintiff’s attorney contacted the court and asked that this hearing be rescheduled for July 13, 2017. Defendants had set a motion to substitute counsel for that date. On July 12, 2017, defense counsel received a telephone call from plaintiff’s counsel’s office asking that the matter be continued again. Defense counsel stated that based on the history of the case, defendants would not agree to any further continuances.

¶ 8 Plaintiff’s counsel failed to appear on July 13, 2017. The trial court was advised of the discussions between the attorneys on the previous day. Defendants moved—orally—to dismiss the cause. Instead, the trial court gave them time to file a written motion. Defendants asked that the case be dismissed for want of prosecution. The trial court granted the motion on August 10, 2017, following a brief hearing.

¶ 9 Plaintiff filed a motion to vacate the dismissal on September 7, 2017. This motion alleged that plaintiff “intends on pursuing this case and requests that the dismissal for want of prosecution be vacated.” It further alleged that “[t]he movant has a valid cause of action, as alleged in the pleadings previously filed herein,” that it had been acting with due diligence prior to the dismissal, and that vacating the order would not prejudice the rights of other parties. The trial court denied this motion, and this appeal followed.

¶ 10 Plaintiff now contends that the trial court erred in dismissing its complaint, with prejudice, for want of prosecution. A court possesses the inherent power to dismiss an action for want of prosecution. *In re Marriage of Hanlon*, 83 Ill. App. 3d 629, 632 (1980). The decision to dismiss a case for lack of diligent prosecution is a matter committed to the discretion of a trial court, and it will not be disturbed absent an abuse of that discretion. *People ex rel. Department of Revenue v. Countryman*, 162 Ill. App. 3d 134, 136 (1987). An abuse of discretion occurs only

if no reasonable person could agree with the position taken by the trial court. *Brax v. Kennedy*, 363 Ill. App. 3d 343, 355 (2005). We review the result at which the trial court arrived, rather than its reasoning. *In re Kendale H.*, 2013 IL App (1st) 130421, ¶ 31. On appeal, the appellant, here plaintiff, bears the burden of establishing that error occurred in the proceedings below. *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008).

¶ 11 It is error to dismiss a case for want of prosecution unless the plaintiff “has been guilty of inexcusable delay in prosecuting the suit.” *Countryman*, 162 Ill. App. 3d at 136. Though there is a preference for resolving cases on their merits, a trial court may nevertheless dismiss a case due to a plaintiff’s lack of diligence in prosecuting the matter. *Illinois Bone & Joint Institute v. Kime*, 396 Ill. App. 3d 881, 883 (2009). Generally, such a dismissal should be set aside if “a satisfactory explanation of the apparent delay has been given, there has been no intentional or wilful disregard of any directions of the court, and it does not appear that further postponement of a controversy on its merits would result in prejudice or hardship to any of the parties.” *Countryman*, 162 Ill. App. 3d at 136. The overarching considerations in deciding whether to vacate such a dismissal are whether substantial justice is being accomplished and whether it is reasonable to proceed to trial under the circumstances. *Mann v. Upjohn Co.*, 324 Ill. App. 3d 367, 377 (2001). Additional considerations include due diligence, the existence of a meritorious claim, the severity of the penalty, and any hardship to the nonmovant. *Id.*

¶ 12 Initially, we note that plaintiff charges that the trial court “improperly focused solely on the length of time that the case had been pending.” It further asserts that the trial court “did not consider” various aspects of the procedural history of the case. This argument misses the mark. As noted, we review only the result reached below, not the reasoning that produced it. *Kendale H.*, 2013 IL App (1st) 130421, ¶ 31. To show an abuse of discretion, it is incumbent upon

plaintiff to demonstrate that no reasonable person could agree with that result. *Brax*, 363 Ill. App. 3d at 355. The underlying reasoning that produced it is not controlling.

¶ 13 Given the state of the record, it is apparent to us that a reasonable person could agree that dismissal for want of prosecution was appropriate. As defendants point out, this was the third complaint filed arising out of the same incident. An earlier complaint against Pegasus in Jo Daviess County was dismissed for want of prosecution when plaintiff failed to appear twice. Plaintiff then refiled in Cook County, naming both defendants. After the case had been transferred back to Jo Daviess County, plaintiff asked for two continuances. Plaintiff's counsel failed to appear after defense counsel refused to agree to the second continuance. On the day the matter was dismissed, though plaintiff was present with an attorney, the attorney stated that plaintiff's (apparently) primary attorney was still trying to withdraw as counsel and still needed more time to do so. While the sanction upon plaintiff is potentially harsh (assuming it could prevail at trial, as plaintiff makes no attempt to explain why its cause of action is meritorious), requiring defendants to continue to show up for hearings that plaintiff was not actively participating in imposed a real hardship, in terms of effort and cost, on defendants. Under such circumstances, a reasonable person could conclude that dismissal for want of prosecution was an appropriate remedy.

¶ 14 Plaintiff blames the delay on the fact that its Chicago-based attorney was withdrawing and being replaced by local counsel in Jo Daviess County. It claimed to have had "communications problems" with counsel in Chicago. However, plaintiff had an independent obligation to follow its own case and not simply rely on counsel. *Marren Builders, Inc. v. Lampert*, 307 Ill. App. 3d 937, 943 (1999). Plaintiff now states that local counsel would be handling the matter going forward. We note that local counsel appeared at several of the

hearings, yet the matter did not go forward. Indeed, defendants managed to substitute new counsel and still meaningfully participate in proceedings after the transfer back to Jo Daviess County. In short, a reasonable person could conclude that plaintiff's alleged problems with the attorney he retained in Chicago did not excuse his failure to diligently prosecute this case. Similarly, even if defendants conduct resulted in some delay (as plaintiff argues), that does not require a finding that plaintiff was acting diligently. Moreover, even if plaintiff is correct that the trial court focused on the length of time that the case (and its predecessors) had been pending, plaintiff does not explain why that is an illegitimate consideration.

¶ 15 In sum, regardless of what we may have found in the first instance, we cannot now conclude that no reasonable person could agree with the trial court. As such, no abuse of discretion occurred, and the judgment of the trial court is affirmed.

¶ 16 Affirmed.