

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

ROGER BREEDING,)
) C.A. No. 05C-06-049 (JTV)
Plaintiff,)
)
v.)
)
HILLANDALE FARMS OF)
DELAWARE, INC., TRAVELERS)
INDEMNITY COMPANY,)
)
Defendants.)

Submitted: October 8, 2010
Decided: January 28, 2011

Walt Schmittinger, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Plaintiff.

H. Garrett Baker, Esq., Elzufon, Austin, Reardon, Tarlov & Mondell, Wilmington, Delaware. Attorney for Defendants.

*Upon Consideration of Defendants’
Motion to Dismiss For Failure to Prosecute*
GRANTED

VAUGHN, President Judge

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ORDER

Upon consideration of the defendants' motion to dismiss for failure to prosecute, and the record of the case, it appears that:

1. This motion stems from a complaint, filed June 24, 2005, in which the plaintiff sought *Huffman* damages. The plaintiff, Roger Breeding, was injured while employed by the defendant, Hillandale Farms. As a result of the injury, the plaintiff had surgery on February 15, 2005.¹ At issue in the case is whether Hillandale's insurer, Travelers Indemnity Company, paid Christiana Care's bill untimely, in violation of 19 *Del. C.* § 2357.²

2. The parties filed cross-motions for summary judgment, which were heard on October 22, 2006. On January 31, 2007, this Court denied both parties' motions, concluding that several questions of fact existed as to whether Christiana Care sent a bill to Travelers on February 23, 2005, whether Travelers provided an incorrect mailing address, and whether Travelers received the bill.³

3. The plaintiff has not pursued the claim since the denial of his motion for

¹ A greater recitation of the facts is laid out in this Court's opinion denying the parties motion for summary judgment. *Breeding v. Hillandale Farms of Del.*, 2007 WL 313575 (Del. Super. Jan. 31, 2007).

² "Complaints filed under § 2357 to collect unpaid workers' compensation awards have come to known as *Huffman* claims." *Rawley v. J.J. White, Inc.*, 2006 WL 1680030, *5 (Del. Super.); (citing *National Union Fire Ins. Co. v. McDougall*, 877 A.2d 969, 971 (Del. 2005)).

³ When the Court denied the cross-motions for summary judgment the case was mistakenly labeled as closed in the Court's files. This mistake, however, has no effect on the Court's analysis of the motion *sub judice*.

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summary judgment. The case has lingered dormantly for approximately three and a half years. At the hearing for this motion, plaintiff's counsel attributed the delay, at least in part, to poor health on the part of the plaintiff and the fact that he lived out of state. Counsel did not, however, explain the inactivity in any greater detail and did not offer a plan to affirmatively move this case forward.

4. As a result of the plaintiff's failure to actively pursue this claim, the defendant moved for dismissal with prejudice pursuant to Superior Court Civil Rule 41(b). Rule 41(b) does not specifically state an amount of time that must elapse before dismissal, but does however, indicate that consideration should be given to the time limitations within Rule 41(e). Rule 41(e) provides that:

In the case of an action which has been pending in this Court for more than six (6) months without any proceedings having been taken therein during that six (6) months, the Prothonotary shall mail after the expiration of the six (6) months, to parties a notice notifying them that the action will be dismissed by the Court for want of prosecution if no proceedings are taken within thirty (30) days. If no proceedings are taken in the action within a period of thirty (30) days after mailing of such notice, it shall thereupon be dismissed as a matter of course for want of prosecution. Such actions may also be dismissed for want of prosecution at any time by motion of any party.⁴

The defendants bases their motion on the court's discretionary authority set forth in the final sentence of Rule 41(e). It is a well-settled rule that a decision to dismiss a

⁴ Super. Ct. Civ. R. 41(e).

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claim for failure to prosecute is within the discretion of the trial court.⁵ In the exercise of this discretion, it is generally held that mere inaction for a year is insufficient.⁶ The moving party is required to show something more to induce the court to act.

5. The court can “dismiss a case for want of prosecution ... in order to manage its affairs effectively and to ‘achieve the orderly expeditious disposition of its business.’”⁷ In making this decision, the court must weigh the circumstances of each case and “the need for judicial economy against Delaware’s preference for affording the litigant [his or her] day in court.”⁸ While a court may have sympathy for a plaintiff, when dismissing a claim, “we may not overlook the rights of the defendant.”⁹ Defendants also deserve court protection and should not have lawsuits hanging over their heads for unnecessarily long periods of time. Plainly stated, a party must actively pursue a claim from its onset through its

⁵ *Ayers v. D.F. Quillen & Sons, Inc.*, 188 A.2d 510, 511 (Del. 1963).

⁶ *Id.*

⁷ *Gregory v. Hyundai Motor America*, 2008 WL 2601388, *2 (Del. Super. July 2, 2008) (citing *Gebhart v. Ernest DiSabatino*, 264 A.2d 157, 159 (Del. 1970)) (holding that while the result was harsh, as to its effect on the plaintiff, a plaintiff cannot avoid the consequences of the actions taken, or not taken for that matter, by her attorney).

⁸ *Gregory*, 2008 WL at *2; see also *Park Centre Condominium Council v. Epps*, 723 A.2d 1195, 1199 (Del. Super. Ct. 1998).

⁹ *Gebhart*, 264 A.2d at 160.

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conclusion.¹⁰

6. This claim has not been actively pursued for a period of about four years now. I find that the plaintiff's explanation for inactivity does not adequately explain a period of inactivity of this duration. In addition, the plaintiff gives no reasonable explanation as to when activity can resume. Under these circumstances, I am persuaded that the case should be dismissed for want of prosecution.

7. For the reasons stated above, this Court ***grants*** the defendants' motion to dismiss for failure to prosecute.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

PRESIDENT JUDGE

cc: Prothonotary
Order Distribution
File

¹⁰ *Park Centre Condominium Council v. Epps*, 723 A.2d 1195, 1199 (Del. Super. Ct. 1998).