

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-000303-MR

ERIC PRICE

APPELLANT

v. APPEAL FROM CARROLL CIRCUIT COURT  
HONORABLE STEPHEN L. BATES, JUDGE  
ACTION NO. 99-CI-00065

MASON & MEFFORD, INC.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: McANULTY, MILLER, AND TACKETT, JUDGES.

MILLER, JUDGE: Eric Price appeals from a December 14, 2000 order of the Carroll Circuit Court dismissing his civil action.

On September 17, 1998, Price was found guilty of forcible detainer upon a jury trial in the Carroll District Court. Kentucky Revised Statutes (KRS) 383.200-.285. Price failed to remove his mobile home from the property of a third party as ordered by the district court. The eviction notice was executed on September 30, 1998 by Sheriff Charles Maiden. After proper notice to Price, Sheriff Maiden hired Mason & Mefford, Inc., (Mason & Mefford) appellee herein, to remove the house trailer. The trailer was removed by Mason & Mefford and placed

in storage. It was Price's belief that in moving the trailer Mason & Mefford caused it to be damaged.

On April 16, 1999, Price filed suit in Carroll Circuit Court claiming damages to the mobile home. Following receipt of Mason & Mefford's answer, Price filed a motion to set for jury trial. The circuit court denied the motion pursuant to a local rule prohibiting trial before all discovery has been completed. From the record, it appears Mason & Mefford propounded interrogatories and requests for production to Price in June or July 1999. It also appears that requests for admissions were made at about the same time. On October 12, 1999, Price filed his responses to Mason & Mefford's request for admissions.

On November 3, 2000, the Carroll Circuit Court filed a notice to dismiss Price's action pursuant to Ky. R. Civ. P. (CR) 77.02(2). The court set the matter for a show cause hearing on December 11, 2000. Price timely responded on December 4, 2000. On December 11, 2000, Price's answers to Mason & Mefford's earlier interrogatories and requests for production were filed with the Carroll Circuit Court. Price's action was dismissed without prejudice by order of the Carroll Circuit Court entered December 14, 2000, thus precipitating this appeal.

Price maintains the circuit court abused its discretion in dismissing his case. He asserts his response to the circuit court's CR 77.02(2) notice to dismiss for lack of prosecution was timely, outlined the merits of the case, explained the reasons for the delay, and demonstrated a sincere desire to proceed.

CR 77.02(2) is a "housekeeping" rule, which has as its purpose expediting the removal of stale cases from the docket. See Hertz Commercial Leasing Corporation v. Joseph, Ky. App., 641 S.W.2d 753 (1982). CR 77.02(2) reads in pertinent part as follows:

At least once each year trial courts shall review all pending actions on their dockets. Notice shall be given to each attorney of record of every case in which no pretrial step has been taken within the last year, that the case will be dismissed in thirty days for want of prosecution except for good cause shown. The court shall enter an order dismissing without prejudice each case in which no answer or an insufficient answer to the notice is made. (Emphasis added).

. . . .

Dismissing pursuant to CR 77.02(2) is within the discretion of the trial court. See Wright v. Transportation Cabinet, Ky., 891 S.W.2d 412 (1995). "Pretrial step" as used in CR 77.02(2) includes "situations in which no action of record has been taken by either party during the year next preceding the judges' review of the docket." Bohannon v. Rutland, Ky., 616 S.W.2d 46, 47 (1981). In the case *sub judice*, it is undisputed no pretrial steps were taken by either party during the one year period immediately preceding the CR 77.02(2) notice filed by the circuit court on November 3, 2000. From the record, it appears the last action in the case by either party was Price's admissions filed October 12, 1999. Price's response to the court's CR 77.02(2) motion indicated that in the time preceding the motion he was searching for "misplaced" damage estimate, and locating and interviewing witnesses. Price's counsel appeared at

the December 11, 2000 hearing without Price. The circuit court determined there was no "pretrial step" taken in the prior year, and rejected Price's showing of cause for the delay. Upon review of the procedural history herein, we cannot say the court abused its discretion in so finding.

Price also maintains the circuit court's dismissal of his action violated his Fifth Amendment rights under the United States Constitution. Price fails to cite us to persuasive authority in support of his contention. As such, we deem this contention to be without merit.

For the foregoing reasons, the order of the Carroll Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Ruth H. Baxter  
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