

IN THE SUPREME COURT OF THE STATE OF DELAWARE

COREY DUNCAN,	§
	§ No. 568, 2000
Plaintiff Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ C.A. No. 98C-06-221
CHARLES SLATTERY, JR.,	§
	§
Defendant Below,	§
Appellee.	§

Submitted: July 24, 2001

Decided: August 21, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

O R D E R

This 21st day of August, 2001, it appears to the Court that:

1) This is an appeal by the plaintiff-appellant, Corey Duncan.

The Superior Court dismissed a civil action filed by Duncan against the defendant-appellee, Charles Slattery, Jr. The Superior Court dismissed Duncan's complaint for failure to diligently pursue his case. We have concluded that the judgment of the Superior Court must be affirmed.

2) The facts are not in dispute. Duncan's attorney contends the facts demonstrate a diligent pursuit of his claims, notwithstanding

Duncan's admitted unavailability for trial. Slattery argues for the opposite conclusion from the same facts. Slattery's argument is meritorious. The record demonstrates a lack of diligence on Duncan's part, even prior to his disappearance before trial.

3) On June 18, 1998, Duncan filed a personal injury action in the Superior Court of the State of Delaware, New Castle County, for an alleged offense that occurred on or about June 17, 1996. On August 1, 1998, Slattery, *pro se*, filed an answer to the Complaint. On August 20, 1998, an attorney for the appellee, Antonia S. Bevis, Esquire, filed an amended answer to the Complaint. In the amended answer, Slattery alleged as an affirmative defense that Duncan's claim is barred by the applicable statute of limitations.

4) On August 28, 1998, Duncan filed a motion to strike the answer and amended answer. Duncan re-noticed the motion for a presentation to the Superior Court on October 14, 1998. Slattery's attorney appeared for the motion, but Duncan's attorney did not appear to argue the motion. The motion judge concluded that Duncan's attorney had abandoned the motion.

5) On December 7, 1998, Duncan filed a motion for leave to amend his Complaint. Duncan never followed up on that motion. The motion was never heard by the Superior Court.

6) On March 18, 1999, an arbitration hearing was held. The arbitrator ruled in favor of Slattery. Duncan filed a demand for trial *de novo* on April 1, 1999.

7) On July 16, 1999, Slattery filed interrogatories and a request for production directed to Duncan. They were never answered. On October 7, 1999, Slattery wrote to Duncan inquiring when discovery responses would be filed. That letter was never answered. On January 11, 2000, Slattery filed a request for admissions directed to Duncan. This request was never answered.

8) The Superior Court scheduled a status conference on March 3, 2000. Duncan's counsel failed to appear. On March 7, 2000, the trial judge wrote a letter scheduling a pre-trial conference for November 2, 2000 and trial for November 13, 2000. On September 29, 2000, the Superior Court issued a Rule 41(e) notice to Duncan.

9) On October 24, 2000, Duncan's attorney wrote to the Superior Court that Duncan was ready to proceed with trial. On October 30, 2000,

Duncan wrote to the Superior Court requesting the pre-trial conference be rescheduled to November 8, 2000.

10) At the pre-trial conference, Duncan's attorney indicated, for the first time, that she could not locate her client. On or about November 13, 2000, the Superior Court of New Castle County, State of Delaware, dismissed Duncan's case for lack of diligent prosecution.

11) In this appeal, Duncan's attorney argues that "the unavailability of Duncan for a short period of time should not be a grounds for dismissal in the present case when it has been actively pursued." Slattery asserts that the Superior Court did not abuse its discretion when it dismissed his complaint for want of prosecution.

12) The record reflects that Duncan did not actively pursue his case from the beginning. Duncan filed his complaint June 18, 1998. He attended an arbitration hearing on March 18, 1999 and did nothing else. Duncan did not pursue his own motions and did not respond to Slattery's motions. There were numerous discovery requests, including a request for admissions, that were never answered by Duncan.

13) The authority to dismiss a plaintiff's action for failure to prosecute is clear. It is an inherent power of the trial court arising from

the control necessarily vested in the court to manage its own affairs and to achieve the orderly and expeditious disposition of its own business.* The record supports the Superior Court's decision to dismiss Duncan's claim for failure to prosecute.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

* *Gerhart v. Ernest DiSabatino & Sons, Inc.*, Del. Supr., 264 A.2d 157, 159 (1970).