

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL J. CANNON,	§	
	§	
Plaintiff Below-	§	No. 534, 2003
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
ROBERT L. PRITCHARD and	§	C.A. No. 02C-05-043
P.C. SUPPLIES, INC., a Delaware	§	
corporation,	§	
	§	
Defendants Below-	§	
Appellees.	§	

Submitted: January 30, 2004
Decided: March 26, 2004

Before **BERGER, STEELE** and **JACOBS**, Justices

ORDER

This 26th day of March 2004, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The plaintiff-appellant, Michael J. Cannon, filed an appeal from the Superior Court's October 14, 2003 order dismissing his lawsuit against defendants-appellees Robert L. Pritchard and P.C. Supplies, Inc. for failure to prosecute. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) Cannon's lawsuit alleged that he sustained personal injuries in a May 25, 2001 automobile accident, which was caused by Pritchard. The case was scheduled for a Superior Court arbitration, and when it was not resolved at that

level, proceeded to the trial track. At a scheduling conference in February 2003, the Superior Court set trial for October 14, 2003. According to Pritchard, the parties subsequently reached a settlement agreement. Cannon, however, disputed that he had agreed to settle the case. Pritchard then filed a motion in the Superior Court to enforce the settlement and Cannon's attorney filed a motion to withdraw.¹

(3) On September 8, 2003, the two motions were heard by the Superior Court. Cannon's attorney's motion to withdraw was granted and Pritchard's motion to enforce the settlement was denied. Although the record does not contain a transcript of the hearing, Pritchard represents that the Superior Court "cautioned Mr. Cannon at length about the need to be prepared to move forward. Mr. Cannon was specifically advised that the trial date of October 14, 2003 would remain on the court's calendar."² Cannon does not dispute this characterization of what occurred at the hearing, nor does he dispute that he did not complete his portion of the pretrial stipulation and did not request a continuance of the trial during the five weeks between the hearing on the motions and the day of trial.

¹ It appears that, by this time, Cannon had approached another attorney regarding representation, but that attorney did not agree to represent Cannon at the October 14, 2003 trial.

² In addition, the Superior Court's October 14, 2003 order of dismissal recites that "[Cannon] was informed that the trial date was still October 14, 2003. [He] was told to get other counsel or be prepared to proceed *pro se*."

(4) In an appeal from the Superior Court's dismissal of a case for failure to prosecute, this Court must determine whether the Superior Court abused its discretion.³ Under the circumstances presented in this case, we find no abuse of discretion on the part of the Superior Court. In denying Pritchard's motion to enforce the settlement, the Superior Court made clear to Cannon that the trial date would remain unaffected. While Cannon apparently attempted to locate counsel to represent him, that attempt was made weeks before the scheduled trial date and was unsuccessful. Cannon clearly was on notice that he would be required to proceed pro se on the trial date of October 14, 2003 or risk dismissal of his case.

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

BY THE COURT:

/s/ Myron T. Steele
Justice

³ *Draper v. Medical Center of Delaware*, 767 A.2d 796, 798 (Del. 2001).