

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM E. HOPKINS, SR.,	§
	§
Plaintiff Below-	§ No. 39, 2004
Appellant,	§
	§
v.	§
	§
KRISTOFOR D. STEEL and	§ Court Below—Superior Court
MILLER BROTHERS MASONRY	§ of the State of Delaware,
CONTRACTORS, INC., a	§ in and for Sussex County
corporation, jointly and severally,	§ C.A. No. 01C-12-024
	§
Defendants Below-	§
Appellees.	§

Submitted: June 24, 2004
Decided: September 13, 2004

Before **STEELE**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

ORDER

This 13th day of September 2004, upon consideration of the appellant's opening brief, the appellees' motion to affirm, and the record below, it appears to the Court that:

(1) The plaintiff-appellant, William Hopkins, filed this appeal from the Superior Court's dismissal of his personal injury claim for lack of prosecution. The appellees have filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Hopkins' opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Hopkins and his wife, with the assistance of legal counsel, filed an initial complaint in December 2001, alleging personal injuries caused by a 1999 automobile accident. The case was submitted for mandatory arbitration. After filing a demand for trial de novo, Hopkins' lawyer filed a motion to withdraw as counsel of record, which the Superior Court granted in August 2002. Thereafter, new counsel entered an appearance on behalf of the Hopkins. The case progressed with both parties taking significant discovery. The parties mutually requested a continuance of the August 2003 trial date because of a problem with deposing the defendants' medical expert. A new, three-day trial date was set to begin January 5, 2004.

(3) On December 1, 2003, the Superior Court held a pre-trial conference. Both parties indicated that they were ready to proceed with trial on January 5. On December 9, 2003, Hopkins' lawyer filed a motion to withdraw as counsel indicating that Hopkins had discharged him as counsel. The Superior Court scheduled an emergency teleconference on the motion and thereafter held a hearing on the motion. At the hearing on December 19, Hopkins informed the trial judge that he did not wish to go forward at trial with his counsel because of his belief that counsel was involved in a conspiracy to tamper with his medical records.

(4) After significant discussion, the trial judge informed Hopkins that the trial date would not be continued unless Hopkins filed a formal motion for a continuance. The trial judge told Hopkins that if he did not request a continuance, then he would be expected to appear on January 5, 2004 prepared to go forward with trial. If Hopkins did not appear or was not prepared, the trial judge told him his case would be dismissed for lack of prosecution.

(5) Hopkins did not file a motion for a continuance. On January 5, 2004, he appeared *pro se* and informed the trial judge that he was not prepared to go forward. Hopkins requested a continuance of the trial, which the defendants vehemently opposed. The trial judge denied the request for a continuance and subsequently granted the defendants' motion to dismiss for lack of prosecution. This appeal followed.

(6) The authority of the Superior Court to dismiss an action for failure to prosecute is clear.¹ On appeal, this Court reviews the Superior Court's dismissal for lack of prosecution for abuse of discretion.² In this case, we find no abuse of the Superior Court's discretion in dismissing Hopkins' case. The Superior Court informed Hopkins' upon firing his

¹ *Gebhart v. Ernest DiSabatino & Sons, Inc.*, 264 A.2d 157, 159 (Del. 1970) (citing Super. Ct. Civ. R. 41).

² *Id.*

attorney that Hopkins must either request a formal continuance prior to the January 5 trial date or else be prepared to go forward with trial on that day without his counsel. Hopkins knew that if he failed to meet one of these conditions that his case would be dismissed. Therefore, Hopkins' request for a continuance on the morning of trial was simply inexcusable. Given the significant amount of time and effort that both defense counsel and plaintiff's former counsel had put into preparing for the January 2004 trial, we find no abuse of discretion in the Superior Court's decision to dismiss the case in light of Hopkins' last minute choice to fire his counsel and his refusal either to prepare for trial or to request a continuance in advance of the trial date as instructed by the trial judge.³

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ See *Clark v. E.I. DuPont de Nemours & Co.*, 2001 WL 1482831 (Del. Super. Oct. 11, 2001), *aff'd*, Del. Supr., No. 557, 2001, Veasey, C.J. (Mar. 6, 2002), *cert. denied*, 537 U.S. 941 (2002).