IN THE SUPREME COURT FOR THE STATE OF DELAWARE

BELFINT, LYONS & SHUMAN, P.A.,	)	
	)	No. 147, 2004
Plaintiff Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for New Castle County
	)	
MARC D. PEVAR and THE PEVAR COMPANY,	)	C.A. No. 99C-04-223
	)	
	)	
Defendants Below,	)	
Appellees.	)	

Submitted: September 8, 2004
Decided: September 17, 2004

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

O R D E R

This 17th day of September 2004, on consideration of the briefs of the parties, it appears to the Court that:

1. Belfint, Lyons & Shuman, P.A., appeals a decision of the Superior Court that dismissed its claims against Appellees Marc D. Pevar and the Pevar Company. Belfint claims the trial judge inadequately considered the merits of its case in light of our decision in an earlier Belfint appeal. We remanded Belfint's first appeal, after concluding that the trial judge was in the best position to determine the merits of Belfint's claims.[1] After reviewing the trial judge's

[1] *Belfint, Lyons & Shuman, P.A. v. Pevar*, 2004 Del. LEXIS 127.

decision on remand, we agree that Belfint's action should be dismissed for failure to prosecute. Accordingly, we affirm.

2. In April 1999, Belfint filed a collection action against Pevar and The Pevar Company in the Superior Court. Several months later, Pevar filed an Answer *pro se* on behalf of himself *and his corporation*. As the case proceeded, both parties attempted unsuccessfully to either settle or arbitrate their claims.

3. Because Belfint's counsel suffered health problems in early 2001, progress on the matter stalled. The Superior Court in April then issued a Rule 41(e) Notice to Belfint's counsel advising that because the case had been inactive for six months, it would be dismissed unless Belfint responded.[2] Belfint did, advising that counsel was out of the office due to illness, and the matter was expected to be scheduled for arbitration by June 2001.

4. In October 2001, the Superior Court issued a second Rule 41(e) Notice because no action had been taken by Belfint since April. After Belfint failed to respond to this second notice, the trial judge dismissed the case the following month. Belfint then filed a motion to reopen under Superior Court Civil Rule 60(b).[3] The trial judge denied the motion, reasoning that Belfint had failed to

[2] *See* SUPER CT. CIV. R. 41(e) ("The Court may order an action dismissed . . . for failure of a party to diligently prosecute the action. . . .").

[3] SUPER CT. CIV. R. 60(b) (directing that the Superior Court "may relieve a party . . . from a final judgment . . . for excusable neglect.").

explain why its case had languished, and thereby failed to demonstrate any "excusable neglect."[4] Belfint did not appeal this decision.

5. Eleven months later, in February 2003, Belfint filed a second Rule 60(b) Motion. For the first time, Belfint asserted that the November 2002 dismissal was void because Pevar, a non-lawyer, could not represent a corporation and therefore any action taken by Pevar on behalf of his corporation, as a separate defendant, was invalid. Belfint maintained that because Pevar's Answer was improperly filed, the case should never have progressed to the point where the complaint could be dismissed. By filing an improper answer, according to Belfint, any later judgment rendered on behalf of the corporate defendant also was void.

6. The trial judge denied the second Rule 60(b) motion, reasoning that the time had passed for Belfint to raise the issue that Pevar's Answer was void. On appeal, we initially affirmed.[5] On Belfint's motion for reargument, however, we vacated the Rule 41(e) dismissal and remanded the matter, finding the Superior Court to be in the best position to assess:

> whether Belfint waived its "voidness" argument; the necessity for finding excusable neglect under these circumstances; and, the impact of the facts of this case on the Superior Court's inherent authority to manage its own docket.[6]

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4 *See id*.

5 *Belfint, Lyons & Shuman, P.A. v. Pevar Co.*, 2003 Del. LEXIS 491.

6 *Pevar*, 2004 Del. LEXIS 127, at *7.

7. In the present appeal, Belfint argues the trial judge had a duty, *sua sponte*, to raise the issue that as a non-lawyer, Pevar was barred from representing his company. In support of its argument, Belfint relies on *Transpolymer Industries v. Chapel Main Corp.*[7] to argue that because the trial judge knew or should have known Pevar was not a member of the Delaware Bar, he should have halted the proceedings before the Rule 41(e) dismissal. Belfint also contends that since the Pevar Company remained unrepresented, the Answer is improper, and any later judgment in Pevar's favor should be void under the authority of *Gibson v. North Delaware Realty Co. Stoneybrook Townhomes*.[8] We review a Rule 41(e) dismissal for abuse of discretion.[9] Appellate review of legal issues is *de novo*.[10]

8. Belfint's reliance on *Transpolymer* for the proposition that the trial judge has a duty to raise *sua sponte* an issue of the appropriateness of a corporate defendant's representation is misplaced. Although there we stated that a corporation must be represented by counsel, we did not impose a duty on the trial judge to determine whether a corporation was properly represented. Rather, we considered in *Transpolymer* whether an inactive corporation had standing to

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7 *Transpolymer Indus., Inc. v. Chapel Main Corp.*, 582 A.2d 936 (Del. 1990).

8 *Gibson v. North Delaware Realty Co. Stoneybrook Townhomes*, 1996 Del. Super. LEXIS 529.

9 *Streitz v. Leroy*, 554 A.2d 1125 (Del. 1989).

10 *International Telecharge, Inc. v. Bomarko, Inc.*, 766 A.2d 437 (Del. 2000).

appear in court notwithstanding representation by counsel.[11] Belfint's contentions on this issue therefore have no merit.

9. *Gibson* is similarly inapposite. In that case, the trial judge held that an unrepresented corporation was barred from initiating litigation. Accordingly, we held that a judgment granted in favor of such an unrepresented corporation is void. The present case is distinguishable from *Gibson* because the corporation in this matter did not initiate litigation and no judgment was rendered at its request. The case was dismissed solely because Belfint failed to prosecute diligently.

10. We conclude that on a careful review of the record the trial judge acted appropriately within his discretion when he dismissed Belfint's case. The trial judge found that the voidness question was moot because no judgment was ever entered in favor of the corporate defendant.[12] The case was dismissed for Belfint's failure to prosecute and thus there is no judgment entered on behalf of the corporation that could be considered void.

11. The trial judge correctly found that Belfint had failed to explain its inaction or point to any facts that would justify a finding of excusable neglect.

12. Finally, we agree that the Superior Court's inherent authority to manage its own docket weighs heavily on the facts of this case. Our courts have

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[11] *Transpolymer*, 582 A.2d at 936.

[12] *Belfint, Lyons & Shuman v. Pevar*, Del. Super., C.A. No. 99C-04-223 (March 23, 2004) (ORDER).

the power to dismiss cases when appropriate in accordance with Rule 41(e). Belfint was twice given notice before the action was dismissed. Belfint was twice given the opportunity to file and argue a Rule 60(b) motion. A judge dismissed this case five years after filing and only after Belfint had ample time to move the case diligently. The Superior Court's inherent authority to manage its own docket justifies the dismissal for lack of prosecution.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice