

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PLAYTEX APPAREL, INC.	§	
	§	No. 199, 2004
Plaintiff Below	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
KATHY MELVIN,	§	No. 02C-11-132
	§	
Defendant Below	§	
Appellee.	§	

Submitted: December 10, 2004

Decided: January 26, 2005

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 26th day of January 2005, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The plaintiff-appellant, Playtex Apparel, Inc., filed this appeal from the Superior Court's dismissal of its declaratory judgment action for failure to prosecute. We find no abuse of discretion by the Superior Court. Accordingly, we affirm.

(2) This matter arises in the context of an Industrial Accident Board (the "Board") action between defendant-appellee Kathy Melvin and Playtex. As a result of an industrial accident suffered by Melvin during her employment with Playtex, the Board awarded Melvin four weeks of temporary partial disability benefits at a rate of

\$219.80 per week and ongoing temporary partial disability benefits at a rate of \$96.80 per week thereafter. The Board also awarded Melvin her attorneys' fees and her medical witness expenses for three physicians who testified on her behalf at the Board hearing.

(3) Following the Board's decision, Playtex withheld the Board-awarded benefits due to Melvin. Playtex claimed that it was entitled to credit for the total disability benefits it had previously paid to Melvin during the pendency of its petition for review. Playtex also refused to pay a portion of the medical witness expenses awarded to Melvin by the Board. It claimed that Melvin was not entitled to recoup these expenses because the Board did not rely on all of Melvin's medical witnesses in reaching its decision. Melvin disputed the alleged credit asserted by Playtex, and made several *Huffman*¹ demands for payment of the Board's award.

(3) Playtex subsequently filed an action in the Court of Chancery seeking a declaratory judgment that it did owe the benefits awarded by the Board and that it was entitled to credit for the total disability benefits it paid to Melvin during the pendency of its petition for review. This action, however, was dismissed for lack of subject matter jurisdiction and was later transferred to the Superior Court for adjudication.

¹ *Huffman v. Oliphant*, 432 A.2d 1207 (Del. 1981).

Melvin again filed a motion to dismiss, asserting that a declaratory judgment action was not the proper procedural mechanism for review of the Board's decision and that Playtex had failed to exhaust its administrative remedies before seeking review of the Board's decision. The Superior Court conducted oral argument on this motion, and ultimately requested additional briefing by the parties. Playtex's counsel then entered into a briefing schedule approved by the Superior Court, in which Playtex's opening brief was due by September 3, 2003.

(4) Playtex did not file its opening brief within the time period prescribed by the briefing schedule. On October 1, 2003, Melvin's counsel wrote Playtex's counsel to inquire about the delinquent brief. Melvin's counsel, however, received no response from Playtex's counsel. Melvin thereafter filed a motion to dismiss for failure to prosecute on November 3, 2003. Playtex filed a response to the motion to dismiss, as well as a motion seeking to extend the briefing schedule, on January 9, 2004. The Superior Court heard arguments on the parties' respective motions, after which it granted Melvin's motion to dismiss.

(5) Following the dismissal of the declaratory judgment action in the Superior Court, Melvin filed a claim for nonpayment of the Board award in the Court of Common Pleas. In that action, Melvin sought payment of the withheld portions of the Board award, liquidated damages, costs and attorneys' fees. Cross motions for

summary judgment were presented to the Court of Common Pleas, after which the Court of Common Pleas granted summary judgment in Melvin's favor. During the pendency of the proceedings in the Court of Common Pleas, Playtex filed the instant appeal to this Court.

(6) 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.² The authority of the Superior Court to dismiss an action for failure to prosecute is clear.³ It is well-settled law that a trial court has discretion to dismiss an action for failure to prosecute.⁴ "This authority stems from the court's inherent power to 'manage its own affairs and to achieve the orderly and expeditious disposition of its business.'"⁵ In the present case, Playtex did not file its opening brief by the briefing schedule deadline. The present record also shows that Playtex took three months beyond the briefing schedule deadline to file its opening brief with the Superior Court. In addition, Playtex never requested an extension of the briefing schedule from the

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

³ *Gebhart v. Ernest DiSabatino & Sons, Inc.*, 264 A.2d 157, 159 (Del. 1970).

⁴ *Draper*, 767 A.2d at 798 (citing *Ayers v. D.F. Quillen & Sons, Inc.*, 188 A.2d 510 (Del. 1963); DEL. SUPER. CT. CIV. R. 41).

Superior Court or opposing counsel until after Melvin filed the motion to dismiss for failure to prosecute. In light of these facts, we find no abuse of discretion on the part of the Superior Court.

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁵ *Id.* (citing *Gebhart*, 264 A.2d at 159).