

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**SEAN BURK, by his next friend Mirasol Burk,)
and RYAN TORPHY, by his next friend John)
Gonzales,)**

Plaintiffs,)

vs.)

Case No. 07-CV-0349-MJR

**STEVE & BARRY’S ILLINOIS, LLC, and)
STOLTZ MANAGEMENT OF DELAWARE,)
INC.,)**

Defendants.)

MEMORANDUM and ORDER

REAGAN, District Judge:

In May 2007, Sean Burk and Ryan Torphy sued Steve & Barry’s Illinois, LLC, and Stoltz Management of Delaware, Inc., alleging claims of race discrimination under the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e *et seq.* and 42 U.S.C. § 1981. Defendant Steve & Barry’s filed a suggestion of bankruptcy upon the record on October 15, 2008 (Doc. 67). After briefing, the action was stayed in its entirety on November 13, 2008 (Doc. 71).

On June 17, 2010, the Court held a status conference at which Attorney Darrell Dunham appeared for Plaintiffs and Attorney John Bruegger appeared for Steve & Barry’s; counsel for Defendant, Stoltz Management of Delaware, Inc., failed to appear. The Court granted on the record Mr. Dunham’s oral motion to withdraw his representation of Plaintiffs, construing it to include the withdrawal of his co-counsel, Tara L. Dahl, who is an associate in Dunham’s firm. At the conclusion of the conference, the Court set a second in-court status conference for Friday, July 16, 2010, at 11:30 a.m.

On the record at the June 17 conference and by written Order, dated June 18, 2010, the Court advised Plaintiff Burk's father, Truman Burk, that he would not be able to represent his son, a minor, in court. Accordingly, if Mr. Burk wished to proceed, he was required to obtain counsel and that counsel was required to enter an appearance by the date of the second status conference - July 16. The Court also advised that Mr. Torphy, who is no longer a minor, must either obtain new counsel or enter an appearance *pro se* by the July 16 status conference. The Court warned Plaintiffs that failure to comply with the Order would result in dismissal of their case. Copies of the Order were mailed by the Clerk of Court to Plaintiffs at their addresses of record.

No lawyer entered an appearance on behalf of either Plaintiff, nor did Mr. Torphy enter a *pro se* appearance. At the July 16 status conference, Mr. Burk announced that he had reached a settlement with Defendants and that his action against Defendants could be dismissed. Mr. Torphy did not appear. Counsel for Stoltz Management orally moved to dismiss the action. Counsel for Steve & Barry's joined in the motion.

The Court observed on the record that the parties had due notice of the hearing and also noted that Mr. Torphy had appeared at neither the June nor the July status conference. Moreover, the Court had explicitly warned Mr. Torphy that failure either to retain counsel or to enter a *pro se* appearance by July 16 would result in dismissal of this action. The Court then orally granted Defendants' motions to dismiss.

For the foregoing reasons, the Court **DISMISSES** this action, pursuant to **FEDERAL RULE OF CIVIL PROCEDURE 41(a), (b)**. Dismissal shall be with prejudice and with each party to bear his or its own costs. The Clerk's Office shall send copies of this Order by mail to Plaintiffs at their addresses of record (see Doc. 79). This case is closed.

IT IS SO ORDERED.

DATED this 21st day of July, 2010

s/Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge