RENDERED: October 24, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002054-MR
&
NO. 2002-CA-002097-MR

MARGARET WALKER; EDWARD WALKER;
MAYSVILLE NEWSPAPER; and LIBERTY
MUTUAL INSURANCE COMPANY — APPELLANTS

v.

CONSOLIDATED APPEALS FROM MASON CIRCUIT COURT
HONORABLE ROBERT I. GALLENSTEIN, JUDGE
ACTION NO. 99-CI-00344

LIMESTONE FAMILY YMCA; and
WILLIAM GRIFFITH — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BUCKINGHAM, COMBS, and DYCHE, Judges.

COMBS, JUDGE. Margaret Walker and her husband, Edward Walker, appeal from a July 16, 2002, order of the Mason Circuit Court dismissing their tort action pursuant to CR[1] 77.02(2). In their complaint, the Walkers sought damages for personal injuries sustained by Margaret when she fell in a parking lot owned by appellee Limestone Family YMCA and maintained by appellee

[1] Kentucky Rules of Civil Procedure.

William Griffith. Their appeal has been consolidated with the appeal of Maysville Newspaper, Margaret's employer at the time of the injury, and its workers' compensation carrier, Liberty Mutual Insurance Company. After a review of the record, we are unable to conclude that the trial court abused its discretion in ordering the dismissal of the lawsuit. Thus, we affirm.

On January 6, 1999, Margaret, a newspaper photographer, drove her vehicle to the YMCA while on assignment by her employer. She fell on snow or ice upon exiting her automobile in the parking lot adjoining the facility. In her deposition, she testified that she hit her head on the car as she fell and that she was unconscious for some period of time. After she regained both consciousness and composure, she went inside the premises and completed her assignment. Later, she complained that she suffered injuries to her head, back, hand, and shoulder. She also believed that her eyesight had been affected by the fall and that she experienced psychological problems related to the incident.

In their complaint filed on December 16, 1999, the Walkers alleged that Margaret's injuries were the result of the negligence of the YMCA and Griffith in their ownership and/or maintenance of the premises. The YMCA filed a cross-claim against Griffith; Margaret's employer and its insurer filed an intervening complaint to recover workers' compensation benefits

paid on Margaret's behalf. Several depositions were taken on behalf of the appellees, the last of which was filed in the record on October 12, 2000. There was no pre-trial activity by any party after that time.

In a notice mailed on May 29, 2002, the court set the matter for a show cause hearing on July 5, 2002. The Walkers responded to the notice by moving for a trial date. At the hearing, the Walkers' attorney provided no explanation for the delay in prosecuting the case. Rather, he made only the following brief statement:

> Your Honor, we're prepared to diligently pursue the case. Ms. Walker is here. We'd like to get the case moving.

The attorney for the intervening plaintiffs acknowledged that he "may have been a little dilatory" in responding to certain discovery requests, but he urged and argued that dismissal was not warranted. The YMCA and Griffith joined in the court's motion to dismiss, contending that in addition to the overall delay, the appellants had also ignored their interrogatories and request for production of documents.

The trial court took the matter under submission. Prior to its ruling, Margaret filed an affidavit stating that she had received treatment continuously since the 1999 injury and that as late as July 2, 2002, had been referred by her psychiatrist to three other health providers.

On July 16, 2002, the trial court entered its order, setting forth its reasoning in support of its dismissal of the case as follows:

> It is abundantly clear from a review of the record[ ] that neither the plaintiffs nor the intervening plaintiffs have taken any steps to prosecute their claims for much longer than one year. . . . Other than filing a set of Interrogatories upon Defendant Limestone Family YMCA simultaneously with [their] Complaint and which were answered more than two years ago on February 2, 2000, the Plaintiffs have taken absolutely no steps toward the prosecution of this action. Upon receipt of notice to show case why the action should not be dismissed, Plaintiff[s] filed a motion to set a trial date which motion does not comply with the Local Rules.
>
> In summary, more than three years have passed since the Plaintiff's claimed injury accident occurred and more than thirty months have passed since the Plaintiff[s] filed [their] lawsuit but yet the Plaintiff[s] [have] not undertaken any measures to prosecute this action.

The appellants' post-judgment motions to vacate the order of July 12, 2002, were denied on September 11, 2002. These appeals followed.

The appellants contend that the trial court abused its discretion in dismissing the case. The Walkers assert "there is no indication" that they were "personally responsible for the lack of activity on the record" and that there is no "history of dilatoriness." (Brief for the Walkers, p. 5). All of the

appellants point out that a less severe sanction was available to the trial court. They contend that dismissal is particularly harsh because the one-year statute of limitations for personal injury claims has already run –- thus precluding the refiling of the complaint. While we agree that dismissal was a drastic sanction, we cannot say that the trial court committed reversible error in imposing this ultimate sanction.

CR 77.02(2), commonly referred to as the "housekeeping rule," is intended to expedite the removal of stale cases from the court's docket. See, Hertz Commercial Leasing Corporation v. Joseph, Ky.App., 641 S.W.2d 753 (1982) and Bohannon v. Rutland, Ky., 616 S.W.2d 46 (1981). CR 77.02(2) provides as follows:

> At least once each year trial courts shall review all pending actions on their dockets. Notice shall be given to each attorney of record of every case in which no pretrial step has been taken within the last year, that the case will be dismissed in thirty days for want of prosecution except for good cause shown. The court shall enter an order dismissing without prejudice each case in which no answer or an insufficient answer to the notice is made.

A dismissal pursuant to CR 77.02(2) is wholly a matter for the exercise of the broad discretion of the trial court. Wright v. Transportation Cabinet, Ky.App., 891 S.W.2d 412 (1995). In this case, it is undisputed that the appellants took no pretrial steps for more than two years immediately preceding

the CR 77.02(2) notice. There was no pretrial activity initiated by any party for nineteen months prior to the notice. The fact that the case may involve exceptionally complex medical issues does not suffice to justify a complete failure by the plaintiffs to press and develop their cause of action after the filing of the complaint. Even though a different circuit court might have been more lenient, we cannot conclude that the court abused its considerable discretion in finding that the appellants failed to show adequate cause for the failure to prosecute their case.

Accordingly, the judgment of the Mason Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS MARGARET AND EDWARD WALKER:

Randy Allen Byrd
Cincinnati, OH

BRIEF FOR APPELLANTS MAYSVILLE NEWSPAPER AND LIBERTY MUTUAL INSURANCE COMPANY:

Timothy J. Walker
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BRIEF FOR APPELLEE LIMESTONE FAMILY YMCA:

Russell H. Saunders
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BRIEF FOR APPELLEE WILLIAM GRIFFITH:

John F. Estill
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