

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001284-MR

DAVID R. RIDDLE

APPELLANT

v. APPEAL FROM CARROLL CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 04-CI-00068

BETHANY D. WESTRICK

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: KELLER, LAMBERT, AND STUMBO, JUDGES.

LAMBERT, JUDGE: David Riddle appeals the trial court's judgment dismissing his personal and property injury suit for lack of prosecution. For the reasons set out herein, we vacate the trial court's order of dismissal and remand with instructions.

This action arises from an automobile collision that occurred in 2002. At the scene of the collision, the plaintiff, David Riddle, declined emergency medical treatment. Subsequently, however, he brought suit against Bethany Westrick for alleged personal and property injuries. To date, though, he has not adduced proof that his injuries

met the minimum threshold required by KRS 304.39-060 or the instigation of this action. Furthermore, much time was squandered in this case due to the withdrawal of his original attorney. Even now that Riddle has obtained new counsel, he still seeks additional time for the production of pertinent discovery materials. Consequently, this action has lingered for several years. Most recently, noting repeatedly missed deadlines and the utter lack of progress in the prosecution of this case, the trial court summarily dismissed Riddle's suit.

Riddle now claims that, below, the trial court failed to meticulously apply the six-factor test required by *Ward v. Housman* before dismissing his suit. Furthermore, he relies on *Toler v. Rapid American*, 190 S.W.3d 348 (Ky.App. 2006), for the principle that, on appeal, we do not lightly affirm summary dismissals of civil complaints. Finally he cogently points us to *Jaroszewski v. Flege*, 204 S.W.3d 148 (Ky.App. 2006), in which we recently remanded an order of summary dismissal for close reconsideration of our six-factor test, which we set out in *Ward v. Housman*.

We find Riddle's citation to our own, recent precedents to be persuasive. Our review of the trial court's written opinion indicates that, while it did explicitly consider a couple of the *Ward v. Housman* factors, it did not address all of them carefully and explicitly, which we required in the recent, reported case of *Jaroszewski v. Flege*, 204 S.W.3d 148 (Ky.App. 2006). Thus, we vacate the trial court's order of dismissal and remand this action for close, careful, and explicit consideration of all six factors enumerated in *Ward v. Housman*.

ALL CONCUR.

BRIEF FOR APPELLANT:

Stephen P. Huddleston
Warsaw, Kentucky

BRIEF FOR APPELLEE:

Susan Cetrulo
Cetrulo & Mowery, P.S.C.
Edgewood, Kentucky