

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001383-MR

SHAUNDARA MILLER

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 16-CI-004427

PERRY LYRISE AND
BUDGET RENT A CAR SYSTEMS, INC.

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND GOODWINE, JUDGES.

GOODWINE, JUDGE: The appellant, Shaundara Miller, appeals the order of the Jefferson Circuit Court dismissing this case under CR¹ 77.02(2) for lack of prosecution. After review, we affirm.

¹ Kentucky Rules of Civil Procedure.

On September 12, 2016, Miller filed a suit in Jefferson Circuit Court against Perry Lyrise and Budget Rent a Car Systems, Inc.² The complaint alleged negligence on the part of Lyrise, who crashed into Miller's car while the two were driving in Louisville, Kentucky. At the time of the accident, Lyrise was operating a vehicle owned by Budget Rent a Car.

On June 11, 2018, the circuit court sent notice to the parties that the case would be dismissed in thirty days for lack of prosecution because no pretrial steps had been taken within the last year. The court did not receive any response to the notice. On July 20, 2018, the court signed an order dismissing the action without prejudice, pursuant to CR 77.02(2).

Miller filed a motion to alter, amend or vacate the order dismissing the action after it was entered. The court denied the motion on August 17, 2018. This appeal followed.

The issue on appeal is whether the dismissal under CR 77.02(2) was appropriate. More specifically, Miller argues her counsel did not receive notice; the court failed to consider the six factors set out in *Ward v. Housman*, 809 S.W.2d 717, 719 (Ky. App. 1991); and the order was not entered by the clerk of the court as required by CR 58.

² Lyrise was not served in the circuit court. That, however, does not change our analysis.

Cases dismissed for lack of prosecution pursuant to CR 77.02(2) are reviewed under an abuse of discretion standard. *Manning v. Wilkinson*, 264 S.W.3d 620, 624 (Ky. App. 2007). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Id.* (citations and internal quotation marks omitted). Furthermore, “[t]he power of dismissal for want of prosecution is an inherent power in the courts and necessary to preserve the judicial process.” *Id.* (citations and internal quotation marks omitted).

CR 77.02 states in pertinent part:

(2) 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.

This rule is commonly referred to as the “housekeeping rule,” and is intended to expedite the removal of stale cases from the court’s docket. *Hertz Commercial Leasing Corporation v. Joseph*, 641 S.W.2d 753, 755 (Ky. App. 1982).

Miller first argues that the court committed reversible error by failing to give notice to her counsel as required by CR 77.02(2). The record shows that notice was sent to Miller’s counsel on June 11, 2018. Miller suggests the reason

her counsel did not receive the notice is because of an extended absence from his office. By the time counsel returned, the court had already entered the order to dismiss. Miller believes that counsel's failure to receive actual notice creates a reversible error. However, we have consistently declined to burden the court by requiring it to show the parties received actual notice before dismissing stagnant cases under this housekeeping rule. *Honeycutt v. Norfolk Southern Railway Co.*, 336 S.W.3d 133, 135 (Ky. App. 2011) (citations omitted). Although the rule requires that notice be sent to the parties and/or their counsel of record, "CR 77.02(2) [cannot] be construed to require that actual notice be received by each attorney of record before the court may proceed with dismissing a case for want of prosecution." *Id.* Therefore, the notice sent on June 11, 2018, was sufficient under CR 77.02(2).

Next, Miller argues that the court only considered the lack of activity in the case as its basis for dismissal. She suggests the court should have also considered six factors set out in *Ward v. Housman* before Kentucky law permitted it to dismiss her case for lack of prosecution. However, this is not the requirement. "[CR 77.02(2)] imposes annual housekeeping duties upon the trial court and requires only notice to the parties and a warning of dismissal except for good cause shown." *Manning*, 264 S.W.3d at 624.

Again, notice was sent to the parties on June 11, 2018. The court gave the parties thirty days to show cause as to why the case should not be dismissed. The order dismissing the case was signed by the court thirty-nine days later on July 20, 2018, after two years of inaction. Moreover, the order clearly states that the matter was dismissed without prejudice. The *Ward* “considerations [do not] necessarily precede a dismissal without prejudice under CR 77.02.” *Id.* In other words, because the court was fulfilling its housekeeping duties and dismissed the case without prejudice it was not required to consider the *Ward* factors. Therefore, the circuit court did not err.

Finally, Miller suggests that the court’s order is not final because it was not entered by the clerk of the court as required by CR 58. This argument is without merit. The rule provides

[b]efore a judgment or order may be entered in a trial court it shall be signed by the judge. The clerk, forthwith upon receipt of the signed judgment or order, shall note it in the civil docket as provided by CR 79.01. The notation shall constitute the entry of the judgment or order, which shall become effective at the time of such notation[.]

CR 58(1). The clerk’s docket contained within the record on appeal shows that on July 23, 2018, the order was entered and notice of order was sent to the parties and counsel of record.

For the foregoing reasons we affirm the Jefferson Circuit Court's order dismissing this action pursuant to CR 77.02(2).

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEES

Mark Joseph Smith
Louisville, Kentucky