

DA 22-0065

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 32N

L. CRAIG SEMENZA,

Plaintiff and Appellant,

v.

HOLLISTER A. LARSON, et al., and HOLLY JEAN LARSON, both
individually and collectively d/b/a FIRST & MAIN BUILDING,

Defendants and Appellees.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DV-09-1189C
Honorable Heidi J. Ulbricht, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

L. Craig Semenza, Self-Represented, Bigfork, Montana

For Appellees:

David G. Tennant, Kaufman Vidal Hileman Ellingson P.C., Kalispell,
Montana

Submitted on Briefs: February 1, 2023

Decided: February 21, 2023

Filed:


Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion, shall not be cited, and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 L. Craig Semenza appeals from the October 6, 2021 Order of the Eleventh Judicial District Court dismissing Semenza's complaint for failure to prosecute pursuant to M. R. Civ. P. 41. Semenza appealed the District Court's dismissal, arguing that his motions were not untimely, and even if any of them were untimely, his health issues justified his delay in prosecuting the case.

¶3 On September 21, 2009, Semenza filed a complaint, alleging wrongful discharge and unpaid wages against Hollister Larson. Semenza filed an amended complaint to include Hollister Larson's daughter, Holly Larson. On March 16, 2012, Semenza filed a motion for summary judgment. The Larsons responded and filed a cross-motion for summary judgment. On July 3, 2012, the District Court denied Semenza's motion in part and granted the Larsons's cross-motion in part. Semenza appealed, and on August 6, 2013, this Court dismissed his appeal without prejudice because the summary judgment order did not adjudicate all of Semenza's claims and the District Court had not certified its judgment as final for appeal. For nearly eight years, Semenza took no further action in the case.

¶4 On August 2, 2021, Semenza filed a motion entitled “Rule 60(b)(1) and (6) Motion Relief from Judgment or Order.” Seven days later, he withdrew the motion. On August 13, 2021, Semenza filed “Plaintiff’s Motion for Time to File a Pleading,” in which he asked for an extension of time to file his brief in support of his M. R. Civ. P. 60(b)(1) and (6) motion. The Larsons filed a motion to dismiss pursuant to M. R. Civ. P. 41 for failure to prosecute because Hollister Larson, the principal defendant, had passed away in March of 2021, the evidence was stale, and the filings were untimely.

¶5 Over approximately the following three weeks, Semenza filed three status notices with the District Court, each one explaining his delay. After the third notice, the District Court ordered Semenza to file his motion and request for certification no later than September 30, 2021, and warned him that the failure to monitor litigation could constitute grounds for dismissal of his case. On September 30, 2021, Semenza filed a document he entitled “Plaintiff’s New Combined Rule 60(b)(1) and (6) with Original Unmailed Rule 54(b) Request for Certification as Exhibit, and the New Rule 54(b) Request for Certification.” In this pleading, while noting that “[t]imeliness is a threshold issue,” Semenza claimed that the side effects of his medication caused his delay in prosecuting his claim.

¶6 The District Court dismissed the case for failure to prosecute because Semenza was not diligent in prosecuting his claims, his delay was “extremely prejudicial” to the Larsons, alternative sanctions could not cure the prejudice caused by Semenza’s “extreme and unreasonable delay,” and Semenza was well-aware that dismissal of the case was at issue.

The District Court found Semenza's medical justifications for the delay unpersuasive because his medication use until 2015 accounted only for the first two of the eight years without prosecution between the 2013 dismissal of his appeal and his renewed activity in 2021.

¶7 “A district court has broad discretion in ruling on a M. R. Civ. P. 41 motion to dismiss, and we will overturn its ruling only for an abuse of discretion. We will vacate a dismissal if, after reviewing the record, we are left with the definite and firm conviction that the district court committed a clear error in weighing the relevant factors.” *ECI Credit, LLC v. Diamond S Inc.*, 2018 MT 183, ¶ 13, 392 Mont. 178, 422 P.3d 691 (internal citations omitted).

¶8 “While pro se litigants may be given a certain amount of latitude, that latitude cannot be so wide as to prejudice the other party.” *Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124. Semenza cursorily addresses the District Court's analysis but does not provide any factual or legal support for his argument. It appears that Semenza denies that he failed to prosecute his case for eight years, instead blaming the District Court for denying his “timely Rule 59(e)” motion which allegedly prevented him from timely filing any other motions, a contention wholly unsupported by the record or law. Nevertheless, Semenza appears to argue that any delay was warranted because he was experiencing serious side effects from a medication he had been taking. As the District Court recognized, though, Semenza's medication use only accounts for the first two years of the eight-year delay. Semenza offers no explanation for the inactivity for the next six years.

While we afford pro se litigants considerable latitude, we do not “conduct legal research on appellant’s behalf, [] guess as to his precise position, or [] develop legal analysis that may lend support to his position.” *State v. Hicks*, 2006 MT 71, ¶ 22, 331 Mont. 471, 133 P.3d 206 (internal citation omitted).

¶9 To the extent that we can discern the merits of Semenza’s argument on appeal, we still conclude the District Court did not abuse its discretion. Upon the defendant’s motion, M. R. Civ. P. 41(b) allows a district court to dismiss an action for failure to prosecute. “In deciding whether a district court has abused its discretion in dismissing an action for failure to prosecute, we consider four factors: (1) the plaintiff’s diligence in prosecuting the claims; (2) the prejudice caused to the defense by the plaintiff’s delay; (3) the availability of alternate sanctions; and (4) whether the plaintiff was warned that the case was in danger of dismissal.” *ECI Credit*, ¶ 16. We consider these factors within the context of public policy that favors a plaintiff’s right to a hearing on the merits and the “trial court’s need to manage its docket and the general policy of encouraging prompt disposition of lawsuits.” *ECI Credit*, ¶ 16.

¶10 After reviewing the record, we are not left with the definite and firm conviction that the District Court committed a clear error in weighing the relevant factors. *ECI Credit*, ¶ 13. Semenza was not diligent in prosecuting his claim as he waited nearly eight years to take any action on his claim after his appeal was dismissed, and his justification for this lack of diligence—taken at face value—explains at most the first two years of that delay. The Larsons are significantly prejudiced by this delay. The evidence is nearly a decade

old, and Hollister Larson, the principal defendant and witness, passed away in March of 2021. Alternative sanctions cannot cure the prejudice because, as the District Court noted, allowing a trial to go forward would “merely reward [Semenza’s] conduct and enable [him] to capitalize on the recent death of the principal Defendant and Defense witness.” Finally, Semenza had notice that his case was in danger of dismissal when the District Court responded to his third notice of status and warned him that his failure to monitor litigation could constitute grounds for dismissal.

¶11 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court did not abuse its discretion when it dismissed Semenza’s case for failure to prosecute. We affirm.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ JIM RICE