

DA 22-0297

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 30N

CENTRON SERVICES, INC., dba CREDIT SYSTEMS,

Plaintiff and Appellant,

v.

CACHERAL D. DELOREAN,

Defendant and Appellee.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DV-18-759(B)
Honorable Robert B. Allison, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Gregory W. Duncan, Centron Services, Inc., Helena, Montana

For Appellee:

Cacheral D. Delorean, Self-represented, Lakeside, Montana

Submitted on Briefs: December 21, 2022

Decided: February 21, 2023

Filed:


Clerk

Justice Ingrid Gustafson 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 and 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 Centron Services, Inc., dba Credit Services (Centron), appeals from the February 26, 2021 Order of Dismissal, the March 2, 2021 Order Denying Motion to Reinstate, and the May 3, 2022 Order Denying Reinstatement issued by the Eleventh Judicial District Court, Lake County, dismissing and refusing to reinstate Centron's Complaint against Cacheral Delorean (Delorean).

¶3 We restate the issue of this appeal:

Did the District Court abuse its discretion when it dismissed Centron's complaint for failing to prosecute under M. R. Civ. P. 41(b)?

¶4 We reverse the District Court's denial of Centron's Motion for Reinstatement and remand for action consistent with this opinion.

¶5 For purposes of collection, Kalispell Regional Hospital (KRH) turned delinquent bills it was unable to collect from Delorean over to Centron. These delinquent bills total \$131,959.82. Upon not being able to work out a payment plan with Delorean, Centron filed a Complaint on July 19, 2018, seeking to recover from Delorean the \$131,959.82 in medical expenses together with interest and costs incurred and accruing. Delorean was served with the Complaint on September 28, 2018. In October 2018, attorney Mark

Buckwalter (Buckwalter) contacted Centron. He requested Centron hold prosecution of its lawsuit against Delorean in abeyance while he, or another attorney, pursued a personal injury claim on Delorean's behalf against Delorean's medical providers. On November 2, 2018, Buckwalter filed an answer on Delorean's behalf and Centron, pursuant to its agreement with Buckwalter, ceased prosecution of its suit against Delorean to permit Delorean time to pursue potential medical malpractice claims. Centron thereafter made attempts on April 25, 2019, June 10, 2019, September 6, 2019, and December 5, 2019, to obtain information from Buckwalter as to the status of Delorean's personal injury claims. No response to these inquiries was received. In March 2020, the COVID-19 pandemic intensified and, at the request of KRH, Centron placed the case on hold. On August 31, 2020, Buckwalter sought to withdraw from his representation of Delorean in Centron's suit against her, asserting Delorean was not responding to his attempts to communicate with her. Buckwalter additionally notified Centron that attorney Jason Bryan (Bryan) was considering taking Delorean's medical malpractice case. In January 2021, Centron sought information from Bryan to determine the status of Delorean's medical malpractice claims. Bryan advised Centron that he had met with Delorean, but did not take her case and did not know if she had found other counsel to represent her.

¶6 On February 26, 2021, the District Court issued its Order of Dismissal, dismissing Centron's case against Delorean. In its Order, the court indicated it had sent out a Notice of Pending Dismissal on January 28, 2021, requiring Centron to file a status report on or before February 12, 2021, describing all work and actions done on behalf of Delorean by counsel and further specifying that failure to do so would result in dismissal of the action.

Upon receiving the Order of Dismissal, Centron learned its employee who was responsible for electronic filing had failed to forward the Notice of Pending Dismissal to another staff member so that the required status report was not calendared and did not get submitted on or before February 12, 2021. When Centron discovered this mistake, it immediately filed a Motion to Reinstate Case on February 26, 2021. In response, on March 2, 2021, the District Court issued an order denying reinstatement “for now” and indicating it would further consider whether it should vacate its prior Order of Dismissal upon receipt of Centron’s status report detailing the information previously requested by the court. On March 4, 2021, Centron filed its Status Report detailing counsel’s actions and explaining its original agreement with Delorean’s counsel to delay prosecution of its debt claim to allow Delorean to pursue personal injury claims against her medical providers.

¶7 On May 12, 2021, Centron filed a Notice of Submission and Request for Scheduling Conference again requesting its case against Delorean be reinstated and that the court convene a scheduling conference. Thereafter, the Case View of the District Court E-Filing system indicated the status of the case as “Reopened.” Centron filed another request for scheduling order on October 12, 2021. Although Centron had not received any scheduling order, based on the Case Information provided in the court’s E-Filing system, Centron believed the case was open. As such, Centron mailed formal discovery requests, including requests for admission, to Delorean on February 8, 2022, and filed a Notice of Service of Formal Discovery on that same date. On March 28, 2022, Centron filed a Motion for Summary Judgment and a Motion to Seal Documents. On May 3, 2022, the District Court issued its Order Denying Reinstatement reaffirming its Order of Dismissal, without

prejudice.¹ In this Order, the District Court noted that since Centron had filed its Status Report on March 4, 2021, it proceeded as though the case had been reinstated, requesting a scheduling order, conducting discovery, and seeking summary judgment. The District Court faulted Centron’s Status Report of March 4, 2021, for failing to include “copies of letters, dates of communication, written internal assessments” of its rationale for deferring collection action to permit Delorean to pursue personal injury claims against her medical providers.

¶8 Centron asserts this case involves the dismissal of its case—in essence, resulting in the granting of judgment to Delorean—for its failure to file a timely status report resulting from a calendaring error in Centron’s office. Centron notes that we review a district court’s decision to deny a motion to set aside a default judgment for only a slight abuse of discretion. *Mont. Prof’l Sports, LLC v. Nat’l Indoor Football League, LLC*, 2008 MT 98, ¶ 21, 342 Mont. 292, 180 P.3d 1142. In essence, Centron asserts the District Court’s denial of its Motion to Reinstate Case to be equivalent to the District Court denying a motion to set aside a default judgment such that we should apply the slight abuse of discretion standard here. Finally, Centron asserts once the error was discovered, it acted diligently and met the M. R. Civ. P. 60(b)(1) criteria provided in *Matthews v. Don K Chevrolet*, 2005 MT 164, 327 Mont. 456, 115 P.3d 201—(1) proceeded with diligence; (2) its neglect was excusable; (3) it has a meritorious defense to the claim; and (4) if permitted to stand, the

¹ Section 27-2-202(2), MCA, provides a 5-year statute of limitations on an account, such as the debt claimed in this cause, not founded upon an instrument in writing.

judgment would affect Centron injuriously—such that the District Court at least slightly abused its discretion in denying reinstatement of its case. *See Matthews*, ¶ 12. Delorean did not file any response or objection to Centron’s March 4, 2021 Status Report; its February 6, 2021 Motion to Reinstate; its May 12, 2021 and October 12, 2021 requests for scheduling conference; its February 28, 2022 First Formal Discovery Requests or Notice of Service of Formal Discovery; or its March 28, 2022 Motion for Summary Judgment. Delorean has, likewise, not filed an Appellee brief contesting Centron’s appeal.

¶9 Upon a closer review of the District Court’s actions, we are not persuaded an M. R. Civ. P. 60(b)—slight abuse of discretion—standard of review applies in this case. Here, the District Court denied Centron’s motion to reinstate, reaffirming its dismissal not for Centron’s initial failure, occasioned by a staff calendaring error, to file a status report but rather upon the District Court’s determination that Centron’s March 4, 2021 Status Report itself was insufficient as it “failed to provide detail – copies of letters, dates of communication, written internal assessments – of the rationale behind deferring action on this collection case in favor of doing little or nothing in pursuit of [Delorean’s] chimera of a successful medical malpractice claim.” At its core, in dismissing Centron’s case, the District Court both sanctioned Centron for failing to very specifically comply with its order requiring a detailed status report to include “copies of letters, dates of communication, written internal assessments” and also determined Centron then failed to demonstrate it timely pursued and prosecuted its lawsuit against Delorean.

¶10 M. R. Civ. P. 41(b) addresses involuntary dismissal *upon a defendant’s motion* to dismiss the action or a claim for failure to prosecute or to comply with the rules or a court

order. While Delorean did not file a motion to dismiss for failure of Centron to prosecute the action, the District Court’s unilateral determination here was in the nature of a Rule 41(b) involuntary dismissal for failure to prosecute the action. As such, we determine it appropriate to apply the standard of review we employ in reviewing motions to dismiss for failure to prosecute under Rule 41(b).

¶11 It is within the discretion of the trial court to dismiss an action if it has not been prosecuted with reasonable diligence and that determination will not be overturned without an abuse of discretion. *Shackleton v. Neil*, 207 Mont. 96, 101, 672 P.2d 1112, 1115 (1983). This Court has set forth the standard for determining whether there has been an abuse of discretion in an order dismissing a cause or claim for failure to prosecute:

A district court’s dismissal pursuant to Rule 41(b) will not be overturned unless the district judge clearly abused his discretion . . . A rule of thumb as to the meaning of the abuse of discretion standard provides that the trial court’s exercise of discretion should not be disturbed unless there is a “definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors.”

Shackleton, 207 Mont. at 101, 672 P.2d at 1115 (quoting *Nealey v. Transportacion Maritima Mexicana, S. A.*, 662 F.2d 1275, 1278 (9th Cir. 1980) (internal citation omitted)); see also *Hauschulz v. Michael Law Firm*, 2005 MT 189, ¶ 17, 328 Mont. 95, 117 P.3d 908.

¶12 *Did the District Court abuse its discretion when it dismissed Centron’s complaint for failing to prosecute under M. R. Civ. P. 41(b)?*

¶13 In determining whether a district court abused its discretion under M. R. Civ. P. 41(b), we consider four factors: (1) plaintiff’s diligence in prosecuting his claims; (2) prejudice to the defense caused by plaintiff’s delay; (3) the availability of other

sanctions; and (4) existence of a warning to plaintiff of potential dismissal. *ECI Credit, LLC v. Diamond S Inc.*, 2018 MT 183, ¶ 16, 392 Mont. 178, 422 P.3d 691; *Hauschulz*, ¶ 18. “We consider these factors in light of public policy considerations that favor a plaintiff’s right to a hearing on the merits, balanced against the trial court’s need to manage its docket and the general policy of encouraging prompt disposition of lawsuits.” *ECI Credit*, ¶ 16 (citation omitted).

Plaintiff’s Diligence in Prosecuting

¶14 In its January 28, 2021 Order Re Pending Dismissal, the District Court noted that since filing of the Answer on November 2, 2018, Centron had taken no action in the case. Based entirely on review of the District Court file, the court deemed Centron’s failure to act as an “absolute and utter failure to prosecute” the case. The District Court ordered Centron to “file a detailed and specific status report no later than February 12, 2021, describing all work and actions done on behalf of Plaintiff by counsel in this matter, further specifying all contact counsel has had with Mr. Buckwalter during the past 26 months since the filing of this action.” Due to an error of a Centron employee, the Order was not referred to the person responsible for Centron’s filing the ordered status report and thus, was not calendared for response. This error resulted in Centron not filing a status report on or before February 12, 2021, and the District Court then issuing an Order of Dismissal on February 26, 2021. When Centron received the Order of Dismissal of February 26, 2021, on that same date it immediately filed a Motion to Reinstate. In turn, on March 2, 2021, the court denied Centron’s motion “for now” indicating the court would consider whether

to vacate its prior dismissal after consideration of Centron’s overdue status report. Centron then immediately filed its Status Report on March 4, 2021.

¶15 In the District Court’s May 3, 2022 Order Denying Reinstatement, the District Court noted the procedural history leading to Centron filing its March 4, 2021 Status Report. The court further noted that over the approximate year following filing of the report, when the court did not act, Centron proceeded as though the case had been reinstated. The District Court then concluded Centron’s “status report failed to provide details – copies of letters, dates of communication, written internal assessments – of the rationale behind deferring action in this collection case in favor of doing little or nothing in pursuit of [Delorean’s] chimera of a successful medical malpractice case.” The District Court then concluded, “Accordingly, the [c]ourt, after reconsidering all aspects of this case including the Motion to Reinstate Case, hereby REAFFIRMS its Order of Dismissal, without prejudice.”

¶16 From our review of the record, the District Court’s finding that Centron’s Status Report failed to support its rationale for deferring its collection action to permit Delorean time to pursue personal injury claims against her medical providers was clearly erroneous and not supported by the record. Although Centron’s Status Report did not specifically include “copies of letters” or “written internal assessments,” it contains substantial information from Centron’s counsel, an officer of the court, which has not been refuted or contested by Delorean, explaining Centron’s agreement with Delorean’s counsel to defer prosecution of the debt collection case to permit Delorean opportunity to pursue personal injury claims against her medical providers.

¶17 In its Status Report, Centron explained that Delorean’s attorney, Mark Buckwalter contacted Centron on October 18, 2018, to request additional time to file an answer as Buckwalter was trying to obtain an attorney to represent Delorean in a malpractice claim against KRH—Buckwalter indicated he thought Bryan would take Delorean’s malpractice case. Per agreement between counsel, Buckwalter filed a late Answer on Delorean’s behalf on November 2, 2018. On December 7, 2018, Buckwalter advised Centron that Delorean had additional health concerns of suffering a heart attack three weeks earlier. Although Centron did not attach letters or emails, Centron’s attorney, an officer of the court, detailed the dates counsel reached out to attorneys Buckwalter and Bryan seeking update through 2019—April 25, 2019, June 10, 2019, September 6, 2019, and December 5, 2019. Centron’s counsel further explained that from experience he understood pursuit of a malpractice claim could take upwards of three years.

¶18 Centron’s counsel further explained in its Status Report that by March 2020, the COVID pandemic had resulted in mass office closures, people working from home, and sickness. Court operations were likewise affected. Due to the pandemic and humanitarian reasons, KRH requested its counsel place all debt collection actions on hold.

¶19 At the beginning of 2020, the COVID pandemic was developing and in March 2020, Governor Bullock proclaimed a state of emergency due to COVID outbreak in Montana. This Court issued an Order on March 27, 2020, suspending all civil jury trials. This Order was extended through May 4, 2020. *See* Memorandum from Mike McGrath, Chief Justice, Montana Supreme Court, to Montana District Court Judges et al. (April 27, 2020) (<https://perma.cc/S3C9-WEGK>). Thereafter, recognizing the COVID pandemic to be “the

most significant public health emergency in more than a hundred years,” courts were instructed to continue planning locally for returning to “necessary” jury trials and required to maintain physical distancing in courthouses, courtrooms, and offices. Significant disruption to all usual societal systems, including Montana’s court system, related to the COVID pandemic remained prevalent through 2020 and well into 2021.²

¶20 Despite the considerable disruption occasioned by the COVID pandemic, in reaffirming its dismissal, the District Court did not address any impact the pandemic had on Centron’s ability to prosecute its claims in 2020 and into 2021. Given the COVID pandemic has been the largest public health crisis in over a hundred years and given its disruption of court system operations in 2020 and into 2021, especially its near total disruption of civil litigation, we conclude the District Court abused its discretion by failing to consider the delay caused by the pandemic during this time as institutional delay rather than as a failure on Centron’s part to prosecute its claims.

¶21 In its May 3, 2022 Order Denying Reinstatement the District Court further faulted Centron for acting as if its cause had not been dismissed during the 14 months the court did not act from March 4, 2021, (the date of Centron’s Status Report) to May 3, 2022, (the date the District Court reaffirmed dismissal of the case). From our review of the record, the District Court’s disgruntlement with Centron during this time was not warranted.

² Throughout 2020 and into 2021, time sensitive cases, such as criminal cases, were prioritized such that civil matters across Montana generally did not progress to trial during this time.

¶22 After seeking reinstatement of its suit against Delorean and filing its March 4, 2021 Status Report, Centron attempted to move forward with prosecution of the cause. On May 11, 2021, in the Case View of the District Court’s E-Filing report, the cause’s status was reported as “Reopened.” Centron then filed a Notice of Submission and Request for Scheduling Conference on May 12, 2021, and received no objection from Delorean or responsive order from the District Court. On October 12, 2021, Centron again filed a request for scheduling conference and again received no objection from Delorean or responsive order from the District Court. Given the “Reopened” status of the cause in the District Court’s case management data system, Centron proceeded with prosecution of the cause by filing and serving formal discovery, filing Notice of Service of Formal Discovery, and filing a Motion for Summary Judgment with supporting affidavit and documentation. Fourteen months after receiving Centron’s Status Report, the District Court issued its Order Denying Reinstatement affirming its original dismissal.

¶23 Given the court’s inaction during this time, the case status designation of “Reopened” in the court’s data management system, and not wanting to risk further assumption by the court that it was not prosecuting its debt claims, it was reasonable for Centron to act as if its case had not been dismissed.

¶24 In sum, the District Court did not assess Centron’s diligence in prosecuting its debt claims in its full context, instead elevating form over substance in finding Centron’s Status Report insufficient for failing to include attachments and completely ignoring the effects of the COVID pandemic as well as its own inaction for over a year.

Prejudice to the Defense Caused by Plaintiff's Delay

¶25 The District Court did not, in either its February 26, 2021 Order of Dismissal or its May 3, 2022 Order Denying Reinstatement, address whether Delorean experienced any prejudice as a result of delay occasioned by Centron. Delorean has not at any time asserted any prejudice relating to delay occasioned by Centron. In fact, Delorean is responsible for the first 17-19 months of delay by requesting Centron permit her additional time to file her answer and by requesting Centron defer prosecution of its debt claims to allow her opportunity to pursue medical malpractice claims against her providers. From our review of the record, there is nothing in the record indicating Delorean to have suffered any impairment in her defense or other prejudice as a result of any delay occasioned by Centron.

Availability of other Sanctions

¶26 The District Court did not address the “availability of alternate sanctions” in its dismissal orders and Delorean did not at any time seek any sanction against Centron for failure to prosecute its claims with due diligence. From our review of the record, Centron reasonably pursued its claims while also considering Delorean’s health problems and potential medical malpractice claims and the impact of the pandemic such that the sanction of dismissal was not warranted.

Warning to Plaintiff of Potential Dismissal

¶27 Although the District Court provided warning to Centron of potential dismissal, the warning did not provide Centron any meaningful opportunity between the warning and dismissal to modify its conduct to avoid dismissal. The District Court sent out a Notice of Pending Dismissal on January 28, 2021, requiring Centron to file a status report describing

all work and actions done on behalf of Centron by counsel and further specifying failure to do so would result in dismissal of the action. Unfortunately, an employee error resulted in Centron failing to calendar the required status report and it was not filed in a timely manner which resulted in the District Court dismissing Centron's cause. Upon Centron filing a motion to reinstate the cause, the District Court indicated it would further consider whether to vacate its prior dismissal upon receipt of Centron's status report. Upon receipt of that report, the District Court did not notify or advise Centron of any correctable deficiency in prosecution of its case, but instead did not act for another 14 months and then denied reinstatement of the cause based in large part on its conclusion Centron's status report was deficient for failure to include copies of letters and written internal assessments and Centron proceeding as if the case were not dismissed over the 14 month period in which the court did not act. Given the notice of potential dismissal did not provide Centron any means to correct its actions to avoid future dismissal, this factor does not weigh heavily against Centron.

¶28 Centron's Status Report, unrefuted and uncontested, indicates delay in prosecution of the debt claim for the first 17-18 months of the case was occasioned primarily by Delorean, not Centron, by her request for additional time to not only file an answer but also to pursue medical malpractice claims. Further delay from there until the District Court's January 25, 2021 Order of Dismissal was primarily occasioned by the COVID pandemic and was out of Centron's control. Thereafter, Centron diligently pursued prosecution of its claims against Delorean. Thus, upon consideration of the Rule 41(b) factors, we are left with a definite and firm conviction the District Court committed clear error, abusing its

discretion by dismissing Centron's cause against Delorean and denying Centron's Motion to Reinstate Case. We reverse and remand to the District Court to reinstate Centron's Complaint.

¶29 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.

¶30 Reversed and remanded.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ JIM RICE

Chief Justice Mike McGrath, dissenting.

¶31 In light of Centron’s complete and utter failure to proceed with diligence in prosecuting a claim it allowed to lay dormant for over two years against an unresponsive defendant, I would affirm the District Court in declining to reinstate Centron’s claim. A plaintiff’s right to a hearing on the merits must be balanced against the interests of defendants, courts, and society in having lawsuits promptly resolved. *ECI Credit, LLC v. Diamond S Inc.*, 2018 MT 183, ¶ 16, 392 Mont. 178, 422 P.3d 691. Moreover, the law favors the vigilant, not “those who sleep on their rights.” *Stundal v. Stundal*, 2000 MT 21, ¶ 17, 298 Mont. 141, 995 P.2d 420 (quotation marks and citation omitted); § 1-3-218, MCA.

¶32 Here, not only did Centron neglectfully fail to respond to the District Court’s January 28, 2021 Order Re Pending Dismissal, but it had, during the preceding two years since filing its complaint, made no filings in the District Court and apparently done little else to move the case forward beyond direct a handful of unresponded-to calls and emails to attorneys believed to be representing Delorean. Counsel’s unelaborated-upon explanations for these delays—(1) that it had been informed Delorean had suffered a heart attack in 2018, (2) that COVID had caused unspecified delays and led a non-party (KRH) to request Centron defer collections cases, and (3) that Delorean was believed to be attempting to pursue a malpractice claim against KRH—are unavailing, particularly in light of Centron’s failure to contemporaneously notify the court of these delays. Centron was aware, or should have been aware, that courts are empowered to dismiss claims which have no filing activity over a period of two years. *See* § 25-1-104, MCA.

¶33 The District Court's rejection of Centron's belated, non-specific, and unconvincing proffered justifications in support of reinstating the case did not, in my estimation, constitute an abuse of discretion.

¶34 I dissent.

/S/ MIKE McGRATH