

Opinion issued September 29, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-11-00691-CV

IN RE REGINA LYNNEA CROSBY, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

In this original proceeding, relator Regina Lynne Crosby seeks a writ of mandamus directing respondent, the Honorable Ben Childers, judge of the County Court at Law No. 1 of Fort Bend County, to vacate his August 5, 2011 order reinstating the case against Crosby on the ground that the reinstatement order was

entered after the trial court's plenary power expired.¹ We conditionally grant relief.

Background

Real party in interest Olivia Petrini, individually and as the next friend to Rino Petrini, sued Crosby for negligence in connection with an automobile accident. On December 6, 2010, the trial court informed counsel in the underlying case, by written notice, that the case was set on the dismissal docket for want of prosecution on December 20, 2010. The notice stated that if counsel wished for the case to remain on the docket, counsel should appear at the dismissal docket and bring a sworn Motion and Order to Retain. It also indicated that failure to comply would cause the case to be dismissed for want of prosecution.

On January 4, 2011, counsel did not appear at the dismissal docket and did not file a motion to retain. The trial court dismissed the underlying case for want of prosecution. On April 28, 2011, Petrini filed a verified motion to reinstate the case. Over Crosby's objection, the trial court signed an order reinstating the case on August 5, 2011. The trial court set the case on the jury trial docket for November 1, 2011.

¹ The underlying case is *Olivia Petrini, individually and as next friend to Rino Petrini v. Regina Lynnea Crosby*, No. 10CCV041490, in the County Court at Law No 1., Fort Bend County, Texas.

Discussion

A trial court's plenary power extends 30 days after a final order of dismissal, absent a timely filed verified motion to reinstate or other post-judgment motion that extends plenary power. *In re Strickland*, No. 01-01-00972-CV, 2002 WL 58482, at * 1 (Tex. App.—Houston [1st Dist.] Jan. 17, 2002, orig. proceeding) (not designated for publication); *see* TEX. R. CIV. P. 165a(3), (4). A reinstatement order rendered after the expiration of the trial court's plenary power is void. *Id.* Mandamus is a proper vehicle to remedy a void reinstatement order. *Id.* (citing *McConnell v. May*, 800 S.W.2d 194, 194 (Tex. 1990) (orig. proceeding)).

Here, the trial court dismissed the case for want of prosecution on January 4, 2011, and there was no post-judgment motion filed to extend plenary power. Thus, the trial court's plenary power extended 30 days after the January 4 dismissal, through February 3, 2011. Petrini's motion to reinstate was not filed until April 28, and the trial court's order reinstating the case was not signed until August 5, long after its plenary power expired. We conclude the trial court lacked jurisdiction to enter the order of reinstatement.

Conclusion

We conditionally grant mandamus relief, and direct the trial court to vacate its August 5, 2011 order of reinstatement. A writ will issue only if the trial court does not comply. We overrule all pending motions as moot.

Rebeca Huddle
Justice

Panel consists of Chief Justice Radack and Justices Bland and Huddle.