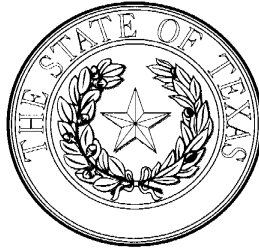


Opinion issued July 27, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00991-CV

BRYSON HYPOLITE, Appellant
V.
HAKEEM ADEYEMI, Appellee

On Appeal from the 125th District Court
Harris County, Texas
Trial Court Case No. 2014-54992

MEMORANDUM OPINION

Appellant, Bryson Hypolite, appeals the trial court's denial of his motion to reinstate filed following the trial court's dismissal of his case against appellee Hakeem Adeyemi for want of prosecution. He argues that the trial court erred in refusing to reinstate his case because he filed a verified motion to reinstate, providing

good cause for his failure to file a motion to retain prior to the dismissal. Because he has not shown that the trial court abused its discretion, we affirm.

Background

Hypolite filed the underlying petition for breach of contract against Adeyemi in 2014. Adeyemi answered and filed a counter-claim asserting that Hypolite was the breaching party. Over the following years, discovery proceeded and the parties continued the litigation. However, from early 2016 until the fall of 2019, there was no activity in the case other than repeated motions to retain.

On September 16, 2019, the trial court notified Hypolite that the disposition deadline for the case was October 11, 2019, and that the court intended to dismiss the case for want of prosecution unless Hypolite obtained a final judgment or filed a verified motion to retain before that deadline. When no final judgment or motion to retain was obtained or filed, the trial court dismissed the case for want of prosecution on November 13, 2019.

On December 13, 2019, Hypolite filed his “Verified Motion to Reinstate,” asserting that his failure to file a motion to retain was not intentional and that he “believed that he had responded, but the response was to another suit with the same parties” that he had filed sometime in 2018. This motion was verified by an affidavit purporting to be that of Hypolite as the plaintiff.

However, on January 10, 2020, Hypolite filed his “First Amended Verified Motion to Reinstate.” In this motion, he indicated that there was an irregularity with the previous verification affidavit by stating that the December 13 motion “mistakenly took a ‘training’ copy of what an affidavit should look like and attached it to the [motion].” The First Amended Verified Motion to Reinstate was being filed to correct this error with the affidavit. The amended motion was verified by an affidavit from Hypolite’s counsel.

There was no hearing on the motions to reinstate, and the motion was overruled by operation of law. *See* TEX. R. CIV. P. 165a(3) (“In the event for any reason a motion for reinstatement is not decided by signed written order within seventy-five days after the judgment is signed, or, within such other time as may be allowed by Rule 306a, the motion shall be deemed overruled by operation of law.”).

Motion to Reinstate

In his sole issue on appeal, Hypolite argues that the trial court erred in refusing to reinstate his case after he filed a verified motion to reinstate providing good cause.

We review an order denying a motion to reinstate for an abuse of discretion. *See Smith v. Babcock & Wilcox Constr. Co.*, 913 S.W.2d 467, 468 (Tex. 1995); *Badall v. Durgapersad*, 454 S.W.3d 626, 643 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). A trial court abuses its discretion when it acts “arbitrarily or unreasonably, without reference to guiding rules or principles.” *Iloff v. Iloff*, 339

S.W.3d 74, 78 (Tex. 2011); *see Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

A party seeking to reinstate a case dismissed for want of prosecution must timely file a verified motion to reinstate. *See* TEX. R. CIV. P. 165a(3); *Martinez v. Benavides*, No. 01–14–00269–CV, 2015 WL 1501793, at *5 (Tex. App.—Houston [1st Dist.] Mar. 31, 2015, no pet.) (mem. op.). Rule of Civil Procedure 165a(3) provides that the motion must be filed within 30 days after the order of dismissal was signed, and it must be verified by the movant or by its attorney. *See* TEX. R. CIV. P. 165a(3); *Martinez*, 2015 WL 1501793, at *5.

Hypolite asserts that he filed a timely verified motion to reinstate; however, the December 13, 2019 motion to reinstate was accompanied by a defective affidavit. Thus, the motion to reinstate filed within 30 days of the date of the judgment was not properly verified. *See* TEX. R. CIV. P. 165a(3) (requiring filing of timely *verified* motion to reinstate). Hypolite attempted to correct this error by filing the Amended Motion to Reinstate on January 10, 2020, but that motion was not timely because it was filed more than 30 days after the order of dismissal. In light of this defect, we cannot say that the trial court abused its discretion in denying Hypolite’s motion to reinstate. *See Iliff*, 339 S.W.3d at 78; *Smith*, 913 S.W.2d at 468.

We overrule Hypolite’s sole issue on appeal.

Conclusion

We affirm the judgment of the trial court.

Richard Hightower
Justice

Panel consists of Justices Kelly, Landau, and Hightower.