

NO. 12-12-00237-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>IN THE MATTER OF THE MARRIAGE</i>	§	<i>APPEAL FROM THE</i>
<i>OF MARIA GUADALUPE SALAS AND</i>		
<i>SANTIAGO SALAS, JR., AND IN THE</i>	§	<i>COUNTY COURT AT LAW</i>
<i>INTEREST OF SAMARIA MILAGRO</i>		
<i>SALAS, A CHILD</i>	§	<i>SMITH COUNTY, TEXAS</i>

MEMORANDUM OPINION

Maria Guadalupe Salas appeals the trial court's dismissal of her suit for want of prosecution. Salas raises four issues on appeal. We reverse and remand.

BACKGROUND

On February 23, 2012, Salas filed a pro se petition for divorce. Salas also filed an affidavit of inability to pay costs. The Smith County District Clerk sent Salas a letter denying her affidavit of inability to pay costs and requested that she remit filing fees of \$260.00 in order to avoid the dismissal of her case. On March 31, 2012, Salas filed a written objection to the district clerk's denial of her affidavit of inability to pay costs pursuant to Texas Rule of Civil Procedure 145.

On April 9, 2012, the trial court dismissed Salas's case for want of prosecution. On April 19, 2012, Salas filed a verified motion to reinstate her suit. On May 14, 2012, Salas filed a motion for hearing on her motion to reinstate. Ultimately, Salas's motion to reinstate was overruled by operation of law, and this appeal followed.

MOTION TO REINSTATE

In part of her third issue, Salas argues that the trial court erred in failing to hold a hearing on her motion to reinstate her suit.

The decision to dismiss a case for want of prosecution rests within the sound discretion of the trial court, and can be disturbed on review only if it amounted to a clear abuse of discretion. See *State v. Rotello*, 671 S.W.2d 507, 508–09 (Tex. 1984); *Bevil v. Johnson*, 307 S.W.2d 85, 87 (1957); *Herrera v. Rivera*, 281 S.W.3d 1, 6 (Tex. App.–El Paso 2005, no pet.). A trial court abuses its discretion when it acts in an arbitrary and unreasonable manner, or when it acts without reference to any guiding principles. See *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985); *Rivera*, 281 S.W.3d at 6. Similarly, we review the denial of a motion to reinstate under a clear abuse of discretion standard. See *State v. Rotello*, 671 S.W.2d 507, 509 (Tex. 1984); *Rivera*, 281 S.W.3d at 8; see also *Downer*, 701 S.W.2d at 241. We may not reverse for abuse of discretion merely because we disagree with the decision of the trial court. See *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991).

Requisites of a Motion to Reinstate and Required Hearing

A motion to reinstate shall set forth the grounds therefor and be verified by the movant or his attorney. TEX. R. CIV. P. 165a(3). It shall be filed with the clerk within thirty days after the order of dismissal is signed or within the period provided by Rule 306a. *Id.* The clerk shall deliver a copy of the motion to the judge, who shall set a hearing on the motion as soon as practicable. *Id.* The court shall reinstate the case upon finding, after a hearing, that the failure of the party or his attorney was not intentional or the result of conscious indifference but was due to an accident or mistake, or that the failure has been otherwise reasonably explained. *Id.*

Once a motion to reinstate meets the threshold requirements of being timely filed and verified, a hearing must be held on it regardless of whether the motion states meritorious grounds or whether the facts verified in the motion are sufficient to sustain the movant’s burden of proof to warrant reinstatement. *Daley v. Powerscreen Tex. Holdings, Inc.*, No. 14-98-00132-CV, 1999 WL 771283, at *2 (Tex. App.–Houston [14th Dist.] Sept. 30, 1999, no pet.) (not designated for publication) (citing *Thordson v. City of Houston*, 815 S.W.2d 550, 550 (Tex. 1991)).

In the instant case, the trial court dismissed Salas’s suit for want of prosecution on April 9, 2012. Salas timely filed her verified motion to reinstate on April 19, 2012. On May 14, 2012, Salas filed a motion for hearing on her motion to reinstate. We hold that because Salas timely filed a verified motion to reinstate, the trial court erred in failing to hold an oral hearing on it.

See *Daley*, 1999 WL 771283, at *2; see also TEX. R. CIV. P. 165a(3). Salas's third issue is sustained in part.¹

DISPOSITION

Having sustained Salas's third issue in part and having determined that we need not address Salas's remaining issues, we *reverse* the trial court's judgment and *remand* the cause for an oral hearing on Salas's motion to reinstate.

SAM GRIFFITH
Justice

Opinion delivered October 17, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)

¹ Because our resolution of this portion of Salas's third issue is dispositive of her appeal, we need not address her remaining issues. See TEX. R. APP. P. 47.1.



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

OCTOBER 17, 2012

NO. 12-12-00237-CV

**IN THE MATTER OF THE MARRIAGE OF MARIA GUADALUPE SALAS
AND SANTIAGO SALAS, JR., AND IN THE INTEREST OF
SAMARIA MILAGRO SALAS, A CHILD**

Appeal from the County Court at Law
of Smith County, Texas. (Tr.Ct.No. 12-0612-E)

THIS CAUSE came to be heard on the appellate record and the briefs filed herein, and the same being considered, because it is the opinion of this court that there was error in the judgment of the court below, it is ORDERED, ADJUDGED and DECREED by this court that the trial court's judgment be **reversed** and the cause **remanded** to the trial court for an oral hearing on Maria Guadalupe Salas's motion to reinstate, in accordance with the opinion of this court; and that this decision be certified to the court below for observance.

Sam Griffith, Justice.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.