

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-19-00367-CV

JAMIE STEGALL, Appellant

V.

WESTON LEE BRANDES, Appellee

On Appeal from the 284th District Court
Montgomery County, Texas
Trial Cause No. 17-09-11789-CV

MEMORANDUM OPINION

Jamie Stegall appeals the trial court's dismissal of her lawsuit against Weston Lee Brandes following the parties' failure to file a joint notice in accordance with the trial court's docket control order, as well as the trial court's denial of the parties' agreed motion to reinstate.¹ In this appeal, we are asked to determine whether,

¹ Stegall's notice of appeal indicates she is appealing the trial court's: (1) dismissal for failure to file joint notice; (2) order denying the agreed motion for continuance; and (3) denial of the agreed joint motion to reinstate which was denied by operation of law. However, her issues on appeal only address the dismissal order and denial of the parties' joint motion to reinstate.

without any further notice, a trial court may dismiss a party's claims for failure to comply with a properly issued Docket Control Order. In two issues, Stegall asks: (1) whether the trial court erred in dismissing the case for the parties' failure to timely file a joint notice as required by a Docket Control Order; and, (2) whether the trial court failed to comply with the notice and hearing requirements of Rule 165a before dismissing her claims. For the following reasons, we reverse and remand the trial court's order of dismissal.

Background²

The parties were involved in an automobile accident in Harris County, Texas, on October 6, 2015, which gave rise to this lawsuit. On April 26, 2019, the trial court entered a Docket Control Order ("DCO"), which contained a trial date of August 5, 2019. The DCO also required the parties to submit a "Joint Notice" fourteen days before trial and provided that **"THIS CASE MAY BE DISMISSED FOR WANT OF PROSECUTION ON OR AFTER THIS JOINT NOTICE FILING DATE IF NO JOINT NOTICE IS FILED WITH THE COURT."** Following the commencement of suit, the parties conducted discovery, and both had difficulty obtaining authenticated copies of Stegall's medical and billing records due to Hurricane Harvey.

² The facts as stated by Stegall are undisputed. Brandes chose not to file a brief in this matter. In a letter sent to the clerk, he indicated he was unopposed to the statements contained in Stegall's brief and the relief requested.

In June 2019, issues arose with turnover in Brandes’s representation and insurance company personnel handling the claim. Due to the new staffing of the case, the parties agreed to continue the matter and decided to file an agreed motion for continuance. In light of these decisions, the parties did not file the “Joint Notice” that the DCO required by the deadline of July 22, 2019. Stegall contends the parties relied on “the mistaken belief that the Agreed Motion for Continuance would sufficiently apprise the Court of the contents of the required Joint Notice, namely whether the parties were ready for trial.”

Brandes filed the agreed motion for continuance and request for new docket control order on July 23, 2019, citing the parties’ difficulties in obtaining necessary records and the circumstances regarding the turnover in Brandes’s legal representation and insurance adjusters. The same day that Brandes filed the agreed motion for continuance, the trial court denied it. The following day, the trial court entered an “Order of Dismissal for Failure to File Joint Notice” without any further notice or a hearing. Thereafter, on August 22, 2019, the parties filed a timely verified “Agreed and Joint Motion to Reinstate” and requested an oral hearing that the trial court refused. The “Agreed and Joint Motion to Reinstate” was overruled by operation of law.³ On October 22, 2019, Stegall filed her notice of appeal.

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

Standard of Review

We review a trial judge's dismissal for want of prosecution and a court's ruling on a motion to reinstate for an abuse of discretion. *See MacGregor v. Rich*, 941 S.W.2d 74, 75 (Tex. 1997) (dismissal for want of prosecution); *Smith v. Babcock & Wilcox Constr. Co.*, 913 S.W.2d 467, 468 (Tex. 1995) (denial of motion to reinstate).

Analysis

“The trial court’s authority to dismiss for want of prosecution stems from two sources: (1) Rule 165a of the Texas Rules of Civil Procedure, and (2) the court’s inherent power.” *Villareal v. San Antonio Truck & Equipment*, 994 S.W.2d 628, 630 (Tex. 1999) (citations omitted). Rule 165a(1) specifically requires the trial court to notify the parties of the “court’s intention to dismiss and the date and place of the dismissal hearing” Tex. R. Civ. P. 165a(1); *Sangster v. Walker*, No. 09-14-00199-CV, 2015 WL 5042142, at *2 (Tex. App.—Beaumont Aug. 27, 2015, no pet.) (mem. op.). Regardless of whether a trial court dismisses a case for want of prosecution under its inherent authority or pursuant to Rule 165a, a party must be provided with notice and an opportunity to be heard before a trial court dismisses a case for want of prosecution. *See* Tex. R. Civ. P. 165a(1); *Villareal*, 994 S.W.2d at

such other time as may be allowed by Rule 306a, the motion shall be deemed overruled by operation of law.” Tex. R. Civ. P. 165a(3)

630; *Sangster*, 2015 WL 5042142, at *2. The requirements of notice and a hearing are necessary to ensure the dismissed claimant has received due process. *See Franklin v. Sherman Indep. Sch. Dist.*, 53 S.W.3d 398, 401 (Tex. App.—Dallas, 2001, pet. denied) (citing *Hubert v. Illinois State Assistance Comm’n*, 867 S.W.2d 160, 163 (Tex. App.—Houston [14th Dist.] 1993, no writ)).

A trial court’s failure to provide adequate notice of its intent to dismiss for want of prosecution requires reversal. *Villareal*, 994 S.W.2d at 630. Even if we assume the use of the word “may” in the court’s docket control order apprised Stegall of its intent to dismiss the case, there is no evidence in the record that the trial court conducted a hearing on the dismissal. Therefore, the court did not afford Stegall an opportunity to be heard before dismissing her case.

After dismissal, Rule 165a(3) requires that upon a party’s filing of a timely verified motion to reinstate, the trial court “*shall* set a hearing on the motion as soon as practicable” and “[t]he court shall notify all parties or their attorneys of record of the date, time and place of the hearing.” Tex. R. Civ. P. 165a(3) (emphasis added). An oral hearing is required on any timely filed motion to reinstate pursuant to Rule 165a. *Thordson v. City of Houston*, 815 S.W.2d 550, 550 (Tex. 1991) (quoting *Gulf Coast Inv. Corp. v. NASA I Bus. Ctr.*, 754 S.W.2d 152, 153 (Tex. 1988)). A trial court that fails to hold an oral hearing on a party’s timely filed motion to reinstate

abuses its discretion. *Id.*; *Sangster*, 2015 WL 5042142, at *2. The record establishes that the trial court failed to conduct an oral hearing on Stegall’s motion to reinstate.

While some courts have indicated that due process concerns over what suffices for sufficient notice are satisfied by providing a party with the order of dismissal and then subsequently giving the party an opportunity to address the merits of the dismissal at a hearing, no comparable opportunity to be heard occurred here.

Durbin v. Mucho, 309 S.W.3d 758, 761 (Tex. App.—Beaumont 2010, no pet.). In the absence of a pre-dismissal hearing, a post-dismissal hearing on a motion to reinstate obviates any due process concerns, since it is essentially “the same hearing with the same burden of proof.” *Franklin*, 53 S.W.3d at 402–03. We conclude that despite a trial court’s notice to the parties in a Docket Control Order that a case may be dismissed for want of prosecution for failure to strictly comply with the terms of the order, a trial court abuses its discretion if the trial court does not provide the parties with due process by providing notice and an opportunity to be heard either before dismissal or post-dismissal on a timely filed and verified motion to reinstate. Because the record in this case shows that Stegall did not receive notice of a dismissal hearing or that the trial court even conducted such a hearing, and the trial court did not conduct a post-dismissal oral hearing on Stegall’s motion to reinstate, despite her request for one, the trial court abused its discretion. We sustain issues one and two.

Conclusion

Because the trial court denied the parties due process by its failure to provide the parties notice and a hearing before dismissing the case for want of prosecution and refused to hold a hearing on Stegall's timely verified motion to reinstate, we reverse and remand to the trial court with instructions to reinstate the case.

REVERSED AND REMANDED.

CHARLES KREGER
Justice

Submitted on April 16, 2020
Opinion Delivered July 9, 2020

Before Kreger, Horton and Johnson, JJ.