

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2006-CP-01639

**HENRY L. MADISON
APPELLANT**

vs.

**MDOC, CHRISTOPHER EPPS, COMMISSIONER, DR. JOHN BEARRY,
MEDICAL DIRECTOR, DR. ROBERT GLENN, PSYCHIATRIST, and DR.
SANTOS, ASST. DIRECTOR
APPELLEES**

**On Appeal From the Circuit Court
of Lauderdale County, Mississippi**

BRIEF OF APPELLEES

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

**JANE L. MAPP
SPECIAL ASSIST. ATTORNEY GENERAL**

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal:

1. Henry L. Madison, Appellant
2. Christopher Epps, Appellee
3. Lester F. Williamson, Jr., Circuit Court Judge
4. Jim Hood, Attorney General

The undersigned counsel further certifies that the following attorneys have an interest in the outcome of this case:

For Appellees:

1. Jane Mapp, Special Assistant Attorney General, State of Mississippi
2. James M. "Jim" Norris, Attorney Senior, MDOC

By:  _____

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ISSUE¹

I. Whether the Circuit Court Properly Dismissed Appellant's Complaint Pursuant to MRCP 41(d) for Want of Prosecution.

¹Appellant Henry Madison sets out six (6) issues in his brief, all of which go to the merits of the case. These issues are not properly before the court since the case was dismissed on procedural grounds for want of prosecution and the trial court never ruled on the merits of the case. Accordingly, these issues will not be addressed.

PROCEDURAL HISTORY

On or about April 19, 2004, Henry L. Madison (“Madison”), an inmate legally incarcerated within the Mississippi Department of Corrections (“MDOC”) filed a Complaint in the Circuit Court of Lauderdale, Mississippi alleging negligence and deliberate indifference to a serious medical need. (C.P. at 6)². Madison named as defendants, MDOC, Commissioner Christopher Epps and Drs. John Bearry, Juan Santos, and Robert Glenn. An answer was filed on behalf of MDOC and Commissioner Christopher Epps on September 3, 2004 and on behalf of Drs. Bearry and Santos on September 7, 2004. (C.P. at 53; 59).

On or about April 4, 2005, almost a year after filing the complaint in this matter, Madison filed a document entitled “Brief in Support of Motion to Vacate and Set Aside Conviction and Sentence.”³ No further pleadings were filed or action taken in the case until July 13, 2006 when the Lauderdale County Circuit Clerk filed a motion entitled “Clerk’s Motion to Dismiss for Want of Prosecution.” (C.P. at 86). The motion informed Madison that the case would be dismissed unless within thirty (30) days he took some action of record or filed a written application to the Court showing good cause why the case should not be dismissed. (C.P. at 86). Madison did not respond to the motion or take any action of record within the thirty (30) days as directed by the clerk. Subsequently, on August 24, 2006 Circuit

² C.P. = Clerk’s Papers

³As this brief is totally unrelated to the issues set forth in Madison’s complaint in this cause, it appears likely that this brief was filed under the wrong cause number.

Judge Lester Williamson entered an order dismissing the case without prejudice for want of prosecution pursuant to MRCP 41(d).

Feeling aggrieved, Madison filed his notice of appeal to this Court. (C.P. at 88). Madison was granted leave to appeal *in forma pauperis*. (C.P. at 91).

SUMMARY OF THE ARGUMENT

The current action was properly dismissed pursuant to MRCP 41(d) for want of prosecution. There had been no action in the case for over twelve months when the motion to dismiss was filed by the clerk of the court. Madison was given notice that the case would be dismissed if he did not take some action within thirty (30) days. No action was taken by Madison within the requisite time period and the case was properly dismissed by the court for want of prosecution.

ARGUMENT

I. Whether the Circuit Court Properly Dismissed Appellant's Complaint Pursuant to MRCP 41(d) for Want of Prosecution.

Any court of law or equity may exercise the power to dismiss for want of prosecution. This power, inherent to the courts, is necessary as a means to "the orderly expedition of justice" and "the court's control of its own docket". *Walker v. Parnell*, 566 So.2d 1213, 1216 (Miss. 1990) (quoting *Watson v. Lillard*, 493 So.2d 1277, 1278 (Miss. 1986)). It has been clear since the adoption of the Mississippi Rules of Civil Procedure that the granting of motions to dismiss is a matter within the discretion of the trial court. *Roebuck v. City of Aberdeen*, 671 So.2d 49, 50 (Miss. 1996) (citing *Carter v. Clegg*, 557 So.2d 1187, 1190 (Miss. 1990)). This Court will not disturb a trial court's ruling on a dismissal for want of prosecution unless it finds an abuse of discretion. *Watson*, 493 So.2d at 1279.

Cucos, Inc. v. McDaniel, 938 So.2d 238, 240 (Miss. 2006).

Rule 41(d) of the Mississippi Rules of Civil Procedure reads in pertinent part as follows:

(1) *Notice.* In all civil actions wherein there has been no action of record during the preceding twelve months, the clerk of the court shall mail notice to the attorneys of record that such case will be dismissed by the court for want of prosecution unless within thirty days following said mailing, action of record is taken or an application in writing is made to the court and good cause shown why it should be continued as a pending case. If action of record is not taken or good cause is not shown, the court shall dismiss each such case without prejudice.

On July 13, 2006, fifteen (15) months after the last action was taken in the case, the Lauderdale County Circuit Clerk filed a Motion to Dismiss for Want of Prosecution. A copy of the motion was mailed to Madison and provided him with notice that the case would be dismissed unless within thirty (30) days he took some action of record or filed a written application to the Court showing good cause why the case should not be dismissed. Forty-two days later, when no action had been taken by Madison, the Circuit Judge properly entered an Order dismissing the case without prejudice for want of prosecution.

The trial judge did not abuse his discretion in dismissing Madison's complaint for want of prosecution. The only action Madison took in the two years before the motion to dismiss was filed was to file a brief in support of a motion to vacate and set aside his sentence. Since his conviction and sentence were not at issue in the present case the brief was obviously filed under the wrong cause number. However, even counting this brief as an action on the record, it was fifteen months after the brief was filed before the Circuit Clerk moved to dismiss the case for want of prosecution. Even after receiving notice that his case

would be dismissed, Madison still made no attempt prosecute the case prior to it being dismissed by the court. Furthermore, in his brief before this Court, Madison makes no attempt to justify his lack of action in the lower court. Instead, he merely argues the merits of his original complaint. Accordingly, the lower court did not err when it dismissed the case without prejudice for want of prosecution pursuant to MRCP 41(d).

CONCLUSION

Based on the arguments of fact and law herein above, it is clear that the trial court did not abuse its discretion in dismissing Madison's complaint for want of prosecution and therefore the dismissal should be affirmed.

Respectfully submitted,

CHRISTOPHER EPPS, MDOC, DR. JOHN
BEARRY and DR. JUAN SANTOS
APPELLEES

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

JANE L. MAPP
SPECIAL ASSISTANT ATTORNEY GENERAL
MS BAR NO.: [REDACTED]

BY: Jane L. Mapp

CERTIFICATE OF SERVICE

I, Jane L. Mapp, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day caused to be mailed, via United States Postal Service, first class postage prepaid, a true and correct copy of the foregoing **Brief of Appellees** in the above-styled and numbered cause to the following:

Henry L. Madison, #T1280
EMCF
10641 HWY 80 West
Meridian, MS 39307

Hon. Lester F. Williamson, Jr.
Circuit Court Judge
P.O. Box 86
Meridian, MS 39302

This, the 2nd day of April, 2007.

A handwritten signature in cursive script, reading "Jane L. Mapp", is written over a horizontal line.

Jane L. Mapp
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