

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2009-CP-01306

**RUBEN PINSON
APPELLANT**

vs.

**BART GRIMES, ET AL.
APPELLEES**

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

BRIEF OF SEPARATE APPELLEE - FAYE NOEL

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

**JANE L. MAPP
SPECIAL ASSIST. ATTORNEY GENERAL
MSB [REDACTED]
510 George Street, Suite 212
Jackson, MS 39202
(601) 359-5770**

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. Ruben Pinson, Appellant
2. Faye Noel, Appellee
3. Robert Bailey, Circuit Court Judge
4. Jim Hood, Mississippi Attorney General

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

For Appellee Faye Noel:

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

For Remaining Appellees

1. Lee Thaggard, Esq.

By: 

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ISSUE

I. Whether the Lower Court Erred in Denying/Dismissing Pinson's Motion for an Order to Show Cause and Temporary Restraining Order.

PROCEDURAL HISTORY

On or about July 30, 2007, Ruben Pinson ("Pinson"), an inmate legally incarcerated within the Mississippi Department of Corrections ("MDOC") filed a Complaint in the Circuit Court of Lauderdale, Mississippi entitled 'Motion for An Order to Show Cause and Temporary Restraining Order.' (C.P. at 4)¹. At all time relevant to these proceedings Pinson was housed at the East Mississippi Correctional Facility ("EMCF"), a private correctional facility located in Meridian, Mississippi. Pinson named as defendants various EMCF employees as well as MDOC Compliance Officer Faye Noel. (C.P. at 4).

A Response was filed on behalf of separate MDOC defendant Noel on or about August 29, 2007. (C.P. at 61). Subsequently, on or about September 10, 2007 an Answer was filed on behalf of the remaining defendants. (C.P. at 66). On or about October 12, 2007, Pinson filed a pleading entitled "Traverse to Respondents Response." (C.P. at 71).

No further pleadings were filed or action taken in the case until March 30, 2009 when the Lauderdale County Circuit Clerk filed a motion entitled "Clerk's Motion to Dismiss for Want of Prosecution." (C.P. at 77). The motion informed Pinson that the case would be dismissed unless within thirty (30) days of the date of the Motion 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 77). Pinson did not respond to the motion or take any action of record within the thirty (30) days as directed by the clerk. Subsequently, on April 29, 2009

¹ C.P. = Clerk's Papers

Circuit Judge Robert W. Bailey entered an order dismissing the case without prejudice for want of prosecution pursuant to MRCP 41(d). (C.P. at 78).

Feeling aggrieved, Pinson filed his notice of appeal to this Court. (C.P. at 79). Pinson was granted leave to appeal *in forma pauperis*. (C.P. at 85).

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. Pinson 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 Pinson the requisite time period and the case was properly dismissed by the court for want of prosecution.

ARGUMENT

I. Whether the Lower Court Erred in Denying/Dismissing Pinson's Motion for an Order to Show Cause and Temporary Restraining Order.

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.

The Mississippi Supreme Court in *Cucos, Inc. v. McDaniel*, 938 So.2d 238, 240 (Miss. 2006) discussed a trial court's authority to dismiss a case for want of prosecution as follows:

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., 938 So.2d at 240. *See also, Madison v. Miss. Dept. of Corrections, et al.*, 966 So.2d 216 (Miss. Ct. App. 2007) (held that the circuit court had no choice but to dismiss plaintiff's action when he failed to file a response to the clerk's motion).

On March 30, 2009, over seventeen (17) 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 Pinson 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. Exactly thirty (30) days later, when no action had been taken by Pinson, 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 Pinson's complaint for want of prosecution. Pinson had taken no action to prosecute his case in nearly a year and a half. Even after receiving notice that his case would be dismissed, Pinson still made no attempt to prosecute the case prior to it being dismissed by the court. Furthermore, other than a brief mention of the prison mailbox rule, Pinson makes no attempt in his brief before this Court, to justify his lack of action in the lower court. Instead, he merely argues the merits of his original complaint. His argument that the order of dismissal was entered too soon because he could have placed a response in the mail on April 29, 2009, the day the action was dismissed, and still have been within the thirty (30) day time frame under the prison mail box rule is without merit. Even though a response Pinson submitted for mailing on April 29, 2009 would be considered filed as of that date under the prison mailbox rule there is nothing in the clerk's papers to indicate that Pinson ever mailed a response to the court. So, while conceivably Pinson could have timely filed a response prior to the Order of Dismissal this was not done and the court waited the requisite thirty (30) days before entering the Order². Accordingly, the lower court did not err when it dismissed the case without prejudice for want of prosecution pursuant to MRCP 41(d).

²In fact it appears that even Pinson's Notice of Appeal was untimely filed. The Notice of Appeal is undated and un-notarized and was stamped filed on June 4, 2009, 35 days after the Order of Dismissal was entered. While his Designation of Record and Certificate of Compliance are dated May 19, 2009, his Request to Appeal *In Forma Pauperis* was notarized June 2, 2009. All of these documents were file on June 4, 2009 so it is logical to assume he submitted them all for mailing on the same date. If he actually submitted them for mailing on June 2, 2009, the date of the notary stamp, then this was 33 days after the case was dismissed and therefore untimely.

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 Pinson's complaint for want of prosecution and therefore the dismissal should be affirmed.

Respectfully submitted,

FAYE NOEL
SEPARATE DEFENDANT-APPELLEE

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

JANE L. MAPP
SPECIAL ASSISTANT ATTORNEY GENERAL
MS BAR N [REDACTED]

BY: Jane L. Mapp

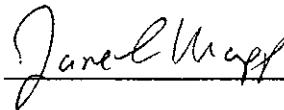
CERTIFICATE OF SERVICE

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:

Ruben Pinson, #M3475
Delta Correctional Facility
3800 County Road 540
Greenwood, MS 38930

Hon. Robert W. Bailey
Circuit Court Judge
P.O. Box 1167
Meridian, MS 39302

This, the 1st day of December 1, 2009.

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

Jane L. Mapp
Special Assistant Attorney General

510 George Street, Suite 212
Jackson, MS 39202
Telephone: (601) 359-5770