

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

November 29, 2005, Session

KARAM HANNA v. GAYLORD ENTERTAINMENT COMPANY

**Direct Appeal from the Circuit Court for Davidson County
00C-327 Barbara Haynes, Circuit Judge**

**No. M2004-00413-WC-R3-CV - Mailed - February 27, 2006
Filed - March 29, 2006**

This is an appeal from the dismissal of a workers' compensation claim for failure to prosecute and to abide by the orders of the trial court with regard to setting the case for hearing. The employee filed a motion to alter or amend the dismissal order which was denied by the trial court. The employee appealed. Finding no abuse of discretion on part of the trial court, we affirm the dismissal.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Trial Court
Affirmed.**

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and WILLIAM H. INMAN, SR. J., joined.

Jay R. Slobey, Nashville, Tennessee, for appellant, Karam Hanna.

Richard K. Smith and Kathleen W. Smith, Nashville, Tennessee, for appellee, Gaylord Entertainment Company.

MEMORANDUM OPINION

I. FACTUAL BACKGROUND.

On February 3, 2000, the Appellant, Karam Hanna, filed a complaint for workers' compensation benefits in the Circuit Court for Davidson County, alleging three work-related injuries. The first of these was alleged to have occurred on January 28, 1999, when five eighty pound boxes fell from a shelf striking him and injuring his head, neck, shoulder and leg. The second injury, according to the complaint, occurred January 30, 1999, when a cleaning chemical blew into his eyes and nose causing him to fall. A third injury was alleged to have occurred on October 17, 1999, when Mr. Hanna slipped in a substance on the floor and fell down a series of steps. The Defendant filed its answer to the complaint on March 9, 2000.

On April 4, 2000, the Appellant filed an amended complaint restating the three previously alleged injuries and adding a fourth work-related injury stated to have occurred on August 30, 1999, when Mr. Hanna slipped in a substance on the floor and fell, injuring his hands. The Appellee, Gaylord Entertainment Company, filed an objection to the amended complaint along with its answer on April 17, 2000. By agreed order, filed May 2, 2000, the amended complaint was authorized to be filed.

On March 9, 2001, a notice was forwarded from the court to counsel for Mr. Hanna indicating the case had been pending for more than one year and would be dismissed unless, within thirty days, a motion to set was filed and heard by the court or permission was obtained from the court to exempt the case from that requirement. On April 26, 2001, an Order of Dismissal was filed dismissing the case pursuant to Rule 18.02¹ of the Local Rules of Practice of the Courts of Record of Davidson County. On May 23, 2001, the Appellant, through his attorney, filed a motion to alter or amend the judgment and to set, asking the trial court to strike its Order of Dismissal and to set the matter for hearing. By order filed July 19, 2001, the trial court granted Appellant's motion to strike its order dismissing the case and directed the matter be set for hearing or for a status conference no later than September 1, 2001.

On September 10, 2003, a second notice was forwarded from the court indicating the case would be dismissed unless, within thirty days, a motion to set was filed and heard by the court or an order was obtained exempting the case from that requirement. On October 21, 2003, a second Order of Dismissal for want of prosecution was filed by the trial court pursuant to the local rule. Appellant again filed a motion to alter or amend the Order of Dismissal, and to set, seeking once again to have the Order of Dismissal set aside. This motion was initially heard by the trial court on October 12, 2003. On that date, counsel for Appellant advised the court that the medical proof had been taken and the case was ready to be tried. The Appellant's counsel explained to the court that attempts to contact the Mr. Hanna had been made on at least ten occasions without response. Appellant's counsel further represented to the court that Mr. Hanna spoke very poor English and could not read the language at all. Because there had been no response to counsel's attempted communications, counsel was unsure whether the Appellant wanted to pursue his case and, accordingly, did not set it for hearing. Finally, Appellant's counsel related to the court that he had recently made contact with his client and Mr. Hanna indicated a desire to pursue his claim. The trial court continued the hearing on the motion until January 9, 2004, when Appellant's motion to alter or amend the Order of Dismissal was denied because of the Appellant's failure to comply with the trial court's July 19, 2001, order requiring the case to be set no later than September 1, 2001. From that ruling of the trial court, the Appellant has filed this appeal.

¹Rule 18.01 of the Local Rules of Practice for the Courts of Record of Davidson County provides: "All civil cases must be concluded or an order setting the case for trial obtained within twelve (12) months from date of filing unless the court has directed a shorter or longer period." Rule 18.02 authorizes the court to take reasonable measures including dismissal or entering a scheduling order to enforce the time standard set forth in Rule 18.01.

II. STANDARD OF REVIEW AND ANALYSIS

A trial court's authority to dismiss a pending case for want of prosecution or noncompliance with the rules or orders of the court is found in Rule 41.02(1), Tennessee Rules of Civil Procedure. That rule provides,

Involuntary Dismissal - Effect Thereof. (1) For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.

Rule 41.02(1) states three separate grounds for involuntary dismissal -- failure to prosecute, failure to comply with the rules, and failure to comply with court orders. While Rule 41.02(1) specifically authorizes only a defendant to move for dismissal, the rule has been construed as allowing Tennessee trial courts to dismiss an action on the court's own motion for failure to prosecute. In *Harris v. Baptist Memorial Hospital*, 574 S.W.2d 730, 731 (Tenn. 1978), the Tennessee Supreme Court stated that "[a]lthough Rule 41.02 does not expressly so provide, we are of the opinion that a trial court may under certain circumstances and upon adequate grounds therefor, *sua sponte* order the involuntary dismissal of an action."

It has been recognized by our courts that Rule 41.02, Tennessee Rules of Civil Procedure, "is necessary to enable the court to manage its own docket, and to protect defendants against plaintiffs who are unwilling to put their claims to the test, but determined to subject them to the continuing threat of an eventual judgment." *Osagie v. Peakload Temp. Serv.*, 91 S.W.3d 326, 329 (Tenn. Ct. App. 2002). A trial court's decision to dismiss under Rule 41.02(1) is reviewed only for an abuse of discretion and, as a result, such dismissals are not often reversed on appeal. Appellate courts will not disturb these decisions in the absence of an affirmative showing that the trial court acted unreasonably, arbitrarily, or unconscionably. *Hodges v. Tennessee Attorney General*, 43 S.W.3d 918, 920 (Tenn. Ct. App. 2000); *Kotil v. Hydra-Sports, Inc.*, No. A-01-9305-CV00200, Tenn. App. 1994 LEXIS 551, *10, 1994 WL 535542, *4 (Tenn. App. Oct. 5, 1994).

In the case before us, Appellant was notified his case would be dismissed unless he set it for trial or he obtained permission from the trial court to exempt the case from that requirement. When the Appellant did not respond, the case was dismissed. Upon motion, that dismissal was set aside and the Appellant was ordered to have the case set for hearing no later than September 1, 2001. For more than two years from that date, the Appellant failed to set the case for trial as ordered. A second notice was sent advising Appellant the case would be dismissed unless set for trial within 30 days. When, again, the Appellant did not respond, the case was dismissed. This time, the court refused to set aside the dismissal. Clearly, grounds for involuntary dismissal as provided in Rule 41.02, Tennessee Rules of Civil Procedure, existed in this case. The Appellant had violated the local rule by not having his case set for hearing within 12 months or obtaining permission from the court for a longer period within which to set the case as required by Rule 18.01, Local Rules of Practice for the Courts of Record of Davidson County. The Appellant failed to abide by an order of the court requiring his case be set on or before September 1, 2001. The Appellant had failed to prosecute his

claim for more than four and a half years at the time it was dismissed. We are firmly of the opinion there was no abuse of discretion by the trial court in dismissing this case.

III. CONCLUSION

Finding no abuse of discretion, the judgment of the trial court is affirmed with costs taxed to the Appellant.

DONALD P. HARRIS, SR. J.

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SPECIAL WORKERS' COMPENSATION APPEALS PANEL
NOVEMBER 29, 2005 SESSION

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Circuit Court for Davidson County
No. 00C-327

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appeals to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the Appellant, Karam Hanna, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM