

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 25, 2007 Session

FRANCOIS DEXTRA v. WESTERN EXPRESS, INC., ET AL.

**Direct Appeal from the Circuit Court for Davidson County
No. 04C-1244 Walter Kurtz, Circuit Judge**

**No. M2006-01815-WC-R3-WC - Mailed - September 21, 2007
Filed - October 25, 2007**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. A complaint was filed by Francois Dextra in the Circuit Court for Davidson County alleging both a claim based in tort and one appearing to seek workers' compensation benefits. The trial court dismissed the tort claim and directed the case proceed as a workers' compensation claim. After more than two years, the case was dismissed by the trial court for failure to prosecute due to the failure of Mr. Dextra to have his case set for trial. On appeal, Mr. Dextra has not asserted that the trial court abused its discretion in dismissing the workers' compensation claim but alleges the trial court erred by dismissing his tort claim and converting it to one for workers' compensation benefits. We find no abuse of discretion in the trial court's dismissal of the case and affirm that judgment. Appellate jurisdiction with regard to the dismissal of Mr. Dextra's tort claim lies with the Court of Appeals and, pursuant to Rule 17 of the Tennessee Rules of Appellate Procedure, the cause is transferred to that court for appropriate review.

Tenn. Code Ann. § 50-6-225(e) (2006 Supp.) Appeal as of Right; Judgment of the Circuit Court Affirmed

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, C.J., and RICHARD E. LADD, SP. J., joined.

Terry R. Clayton, Nashville, Tennessee, for the appellant, Francois Dextra.

Richard C. Mangelsdorf, Nashville, Tennessee, for the appellee, Western Express, Inc.

MEMORANDUM OPINION

On April 30, 2003, Francois Dextra was employed as a truck driver by Western Express, Inc. (Western Express). In the course of his employment, he was involved in an vehicle accident in the Commonwealth of Virginia, and was injured as a result of that accident.

Mr. Dextra, a resident of Mississippi at the time, filed a complaint in the Circuit Court of Davidson County on April 29, 2004 against Western Express, a Tennessee corporation. The complaint alleged that, due to the failure of Western Express to properly maintain the vehicle, the right front axle separated from Mr. Dextra's truck causing it to collide into an embankment. The complaint contained both tort and workers' compensation claims, and prayed for an award of damages as well as reimbursement for medical expenses, disability benefits, and compensation for permanent partial impairment.

Western Express moved to dismiss the complaint for failure to state a claim upon which relief could be granted, pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. Western Express asserted that Tennessee law precludes one from joining a tort claim with a workers' compensation claim, and also asserted its immunity from suit in tort pursuant to Tennessee Code Annotated section 50-6-108. Mr. Dextra filed a response to the motion, asserting that Western Express was not immune from tort liability. At the same time, without obtaining leave of court, Mr. Dextra filed an amended complaint seeking to limit his claim to one strictly grounded in tort.

On July 1, 2004, the trial court entered an order granting in part and denying in part Western Express's motion to dismiss. The trial court dismissed the tort claim and directed the complaint proceed as a claim for workers' compensation benefits. Western Express subsequently filed an answer on July 16, 2004 in which it asserted that Mr. Dextra's medical expenses and temporary disability benefits had been paid pursuant to the Tennessee Workers' Compensation Act.

Mr. Dextra took no further action regarding the case for nearly eleven months. On June 3, 2005, the trial court issued a notice, pursuant to Rule 18.02 of the Local Rules of Practice for the Courts of Record of Davidson County (Local Rules), 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.¹ Mr. Dextra responded by filing two motions: the first requesting exemption from the rule a case be set for trial within one year, and the second seeking relief, pursuant to Rule 60.02(5) of the Tennessee Rules of Civil Procedure, from the July 1, 2004 order dismissing his tort claim. On June 28, 2005,

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.

the trial court granted the motion for exemption from the one-year rule and denied the motion for relief from the judgment dismissing the tort claim.

Over one year later, no further action had been taken with regard to the workers' compensation claim. The trial court, by order dated August 1, 2006, dismissed the case for failure to prosecute, pursuant to Rule 18 of the Local Rules and Rule 41.02 of the Tennessee Rules of Civil Procedure. Mr. Dextra has appealed, again alleging that the trial court erred in dismissing the tort claim and reforming the complaint to one for workers' compensation benefits.

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. 01-A-01-9305-CV00200, 1994 WL 535542, *4 (Tenn. Ct. App. October 5, 1994).

On appeal, Mr. Dextra contends that the trial court erred by dismissing his tort claim and reforming his complaint into an action for workers' compensation benefits. Mr. Dextra does not assert that the trial court abused its discretion by dismissing the case for failure to prosecute. Based upon our review of the record, we conclude that the complaint for workers' compensation benefits was properly dismissed for want of prosecution.

We turn to Mr. Dextra's assertion that the trial court erred by dismissing his tort claim. The parties did not raise the jurisdictional issue on appeal, but as an appellate court, we also consider

“whether the trial and appellate court have jurisdiction over the subject matter, whether or not presented for review.” Tenn. R. App. P. 13(b).

Tennessee Code Annotated section 16-4-108(a)(1)(1994) provides the jurisdiction of the Court of Appeals “extends to all civil cases except workers’ compensation cases . . .” Tennessee Code Annotated section 50-6-225(e)(1) provides that any party to a workers’ compensation case may appeal to the Supreme Court. Tennessee Code Annotated section 50-6-225(e)(3) authorizes the Supreme Court to refer workers’ compensation cases to a special workers’ compensation appeals panel. This panel is without jurisdiction to hear and determine the appeal challenging the appropriateness of the trial court’s dismissal of Mr. Dextra’s tort claim. Rule 17 of the Tennessee Rules of Appellate Procedure provides that “[i]f a case is appealed to the Supreme Court, Court of Appeals, or Court of Criminal Appeals that should have been appealed to another court, the case shall be transferred to the proper court.” Accordingly, the appeal from the dismissal of Mr. Dextra’s tort claim must be transferred to the Court of Appeals for its consideration and decision. Van Cleave v. McKee Baking Co., 712 S.W.2d 94, 95 (Tenn. 1986).

The judgment of the trial court in dismissing the workers’ compensation action is affirmed. The appeal of the dismissal of the tort claim is transferred to the Court of Appeals. The costs of this appeal are taxed to Francois Dextra.

DONALD P. HARRIS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
JUNE 25, 2007 SESSION

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**Circuit Court for Davidson County
No. 04C-1244**

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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 are taxed to Francois Dextra, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM