

IN THE COURT OF APPEALS 12/12/95

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00280 COA

SHANNON STEELMAN

APPELLANT

v.

DEWAYNE L. ROBINSON, A MINOR, AND TED L. ROBINSON

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. R.I. PRICHARD, III

COURT FROM WHICH APPEALED: PEARL RIVER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

THOMAS D. BERRY, JR.

ATTORNEYS FOR APPELLEES:

BILLY W. HOOD, E. COLETTE TOWLES

NATURE OF THE CASE: CIVIL: CASE DISMISSED AS STALE CASE

TRIAL COURT DISPOSITION: DISMISSED CASE PURSUANT TO UNIFORM CIRCUIT
COURT RULE 2.02

BEFORE THOMAS, P.J., BARBER, AND DIAZ, JJ.

DIAZ, J., FOR THE COURT:

The Pearl River County Circuit Court dismissed the present case as a stale case pursuant to Rule 2.02 of the Uniform Circuit Court Rules of Mississippi. The appellant, Shannon Steelman (Steeleman), filed a motion to reinstate which was subsequently denied. Aggrieved, Steelman appeals to this Court asserting the sole issue that the trial court abused its discretion in overruling her motion to reinstate. Upon reviewing the facts in the record, we agree with Steelman's contention and therefore, reverse and remand this case.

FACTS

On August 29, 1994, Steelman filed a complaint in negligence against Dwayne L. Robinson, a minor, and his father, Ted L. Robinson (the Robinsons). Process was served on September 6, 1994. The Robinsons filed a motion for time to answer which was granted. Subsequently, they filed an answer on November 9, 1994. Steelman began discovery by propounding a request for document production and interrogatories upon the Robinsons. These requests were filed at the clerk's office on December 6, 1994. Meanwhile, the parties missed two docket calls for the case on September 26, 1994, and January 9, 1995. On January 27, 1995, the circuit judge dismissed the case as a stale case pursuant to rule 2.02 of the Uniform Circuit Court Rules of Mississippi. On January 30, 1995, after the order to dismiss was entered but before it was mailed out, Steelman sent a letter to the circuit court clerk advising the court that she had answered the interrogatories propounded to her as well as responded to the Robinsons' request for document production. Steelman filed a motion to reinstate the case on February 7, 1995, the same day she received the order to dismiss. The circuit court denied this motion.

DISCUSSION

The sole issue before us today is whether the lower court abused its discretion in overruling Steelman's motion to reinstate the case. We will not reverse an order on appeal unless there has been manifest abuse of discretion. *Mississippi Rice Growers Assoc. v. Pigott*, 191 So. 2d 399, 406 (Miss. 1966). Upon reviewing the record, specifically the docket sheet, we find that the trial court abused its discretion when it refused to reinstate this case.

We acknowledge the fact that trial courts have the authority to control their dockets, however, the action taken here exceeds that authority. *Watts v. Pennington*, 598 So. 2d 1308, 1311 (Miss. 1992) (citing *Rhodes v. Rhodes*, 420 So. 2d 759, 761 (Miss. 1982)). "While courts have the responsibility to see that cases come on for trial as efficiently as may be practical, they will afford unto litigants, where at all possible, trial of those cases on the merits." *Liberty Sav. & Loan Assoc. v. Mitchell*, 398 So. 2d 208, 210 (Miss. 1981). The *Liberty Savings & Loan* case held that the trial court erred when it dismissed the case as a stale case in light of the facts and the record. *Liberty Sav. & Loan Assoc.*, 398 So. 2d at 211. In that case, both parties were proceeding with discovery when the attorney representing *Liberty Savings & Loan* died in a plane crash. Consequently, *Liberty* contacted opposing counsel who agreed to "lay this case on the back burner" until the matters of obtaining additional counsel were straightened out. *Id.* at 209. Six months later, the opposing counsel representing Mitchell filed a motion to dismiss, which was granted pursuant to section 11-53-25 of the Mississippi

Code. This code section reads as follows:

The clerk of any court shall move the court to dismiss any cause pending therein in which no step has been taken for the two terms preceding; and the court shall, unless good cause be shown to the contrary, dismiss the same at the costs of the plaintiff or complainant."

Miss. Code Ann. § 11-53-25 (1972).

The Supreme Court reversed the order because it found that *Liberty* had been diligently trying to secure counsel for the case. The court stated, " We are of the opinion that it was not a stale case, whether considered under the verbiage of the statute, *supra*, or in light of the court's inherent power to dismiss causes which are not prosecuted." *Id.* at 211. When applying the rationale stated in *Liberty Savings & Loan*, we think that the present case was not stale as contemplated in Rule 2.02 of the Uniform Circuit Court Rules.

The controlling rule at issue is Rule 2.02 of the Uniform Circuit Court Rules. This rule has since been omitted from the new Uniform Rules of Circuit and County Court Practice. Rule 2.02 states:

Cases upon the civil issue docket, where process has not been served or where process has been served, and that have been called for trial for two terms of court, without any step taken, or trial demanded, shall be dismissed as stale, at plaintiff's cost without notice, unless good reason be shown for a further continuation; and no cause that has been so dismissed shall be reinstated without affidavit setting forth good reason for reinstatement.

Unif. Cir. Ct. R. 2.02. Although we bestow upon the trial courts wide discretion in controlling their dockets, we think dismissing this case was contrary to the spirit of the rule. Considering the record before us, the parties missed two docket calls; however, both parties were actively proceeding with discovery. The purpose of this rule was to dismiss stale cases that have been called for trial for two terms of court, without any step taken, or trial demanded. Had the record reflected that little or no action was taken, the trial court would probably be justified in dismissing the case as a stale case. This was not the situation here.

The lower court stated in its order, " Moreover, the Court cannot be expected to examine all of the files in the Circuit Clerk's office periodically to determine which cases are actively being pursued." While we agree with this statement, we do not think it would have been necessary for the lower court to examine the entire file. A cursory view of the docket sheet would have been all that was necessary to see that dismissing this case a stale case would be nonsensical. Although the trial court was merely applying Rule 2.02, the rule should not be blindly applied. The purpose and intent of the rules must always be kept in mind in order to insure that the judicial system works efficiently in the way it was intended.

For these reasons, we hold that the trial court abused its discretion in refusing to reinstate this case.

This case should have been reinstated upon Steelman's motion and argument. Therefore, we reverse the judgment of the Pearl River Circuit Court and remand this cause for further proceedings not inconsistent with this opinion.

THE JUDGMENT OF THE CIRCUIT COURT OF PEARL RIVER COUNTY DENYING REINSTATEMENT OF THE CASE IS REVERSED AND THE CAUSE IS REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS ARE TAXED TO THE APPELLEES.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.