

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs September 19, 2007

**LARRY BUDD v. RENEE BARRINGTON**

**Appeal from the Circuit Court for Sumner County  
No. 27115-C C. L. Rogers, Judge**

**No. M2006-01428-COA-R3-CV - Filed September 26, 2007**

Larry Budd (“Budd”), while incarcerated by the State of Tennessee in Clifton, Tennessee, filed this lawsuit against Renee Barrington (“Barrington”) in June of 2005. Almost one year later, the Trial Court entered an order informing the parties that a hearing would be held on whether the case should be dismissed for failure to prosecute because absolutely no action had been taken to prosecute the case after it was filed. When no response to the order was received and no one appeared at the hearing via telephone or otherwise, the Trial Court dismissed the case. Budd appeals the dismissal and, finding no abuse of discretion, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the  
Circuit Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Larry Budd, *pro se* Appellant.

Renee Barrington, Appellee (no brief filed).

## MEMORANDUM OPINION<sup>1</sup>

Budd filed this *pro se* lawsuit on June 29, 2005. Budd currently is incarcerated in Clifton, Tennessee, and was so incarcerated when the complaint was filed. Budd sued Barrington claiming that Barrington, while acting as Budd's "attorney-in-fact," misappropriated over \$4,000 of his money. Apparently, Budd signed a Power of Attorney sometime in 2004 in anticipation of his impending incarceration.

Barrington was served with a copy of the complaint on June 30, 2005. No answer was filed.

The next document in the file is an order entered by the Trial Court on May 19, 2006. In this order, the Trial Court directed "that all parties appear to consider whether this action should be dismissed for failure to prosecute." The Trial Court further indicated that the hearing would be held on June 9, 2006. The Trial Court certified that both Budd and Barrington were sent copies of the order. On June 9, 2006, no one appeared at the hearing. Additionally, no documents had been filed by either party in response to the Trial Court's May 19th order. Accordingly, the Trial Court dismissed the lawsuit, and Budd now appeals.

In his brief, Budd offers no adequate explanation as to why absolutely no action was taken to move this case along: (1) from the time the lawsuit was filed until entry of the Trial Court's May 19th order; or (2) after receipt of the May 19th order up until the hearing on June 9th.

In *Hodges v. Attorney General*, 43 S.W.3d 918 (Tenn. Ct. App. 2000), we observed:

Parties who choose to represent themselves are entitled to fair and equal treatment by the courts. *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997). However, the courts may not prejudice the substantive rights of the other parties in order to be "fair" to parties representing themselves. Parties who choose to represent themselves are not excused from complying with the same applicable substantive and procedural law that represented parties must comply with. *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n.4 (Tenn. Ct. App. 1995); *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). Thus, Mr. Hodges, like any other litigant represented or not, must comply with the requirements of [the Rules of Civil Procedure]....

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<sup>1</sup> Rule 10 of the Rules of the Court of Appeals provides: "This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated 'MEMORANDUM OPINION,' shall not be published, and shall not be cited or relied on for any reason in any unrelated case."

Trial courts possess inherent, common-law authority to control their dockets and the proceedings in their courts. Their authority is quite broad and includes the express authority to dismiss cases for failure to prosecute or to comply with the Tennessee Rules of Civil Procedure or the orders of the court. Tenn. R. Civ. P. 37.02(C); Tenn. R. Civ. P. 41.02(1); *Kotil v. Hydra-Sports, Inc.*, No. 01A01-9305-CV-00200, 1994 WL 535542, at \*3 (Tenn. Ct. App. Oct. 5, 1994) (No Tenn. R. App. P. 11 application filed). Because decisions to dismiss for failure to prosecute are discretionary, *White v. College Motors*, 212 Tenn. 384, 386, 370 S.W.2d 476, 477 (1963), reviewing courts will second-guess a trial court only when it has acted unreasonably, arbitrarily, or unconscionably. *Friedman v. Belisomo*, No. 02A01-9304-CH-00094, 1993 WL 498504, at \*3 (Tenn. Ct. App. Dec. 1, 1993) ( No Tenn. R. App. 11 application filed). Trial courts may, on their own motion, dismiss cases for lack of prosecution, but this authority should be exercised sparingly and with great care. *Harris v. Baptist Mem'l Hosp.*, 574 S.W.2d 730, 731 (Tenn. 1978).

*Hodges*, 43 S.W.3d at 920-21.

We acknowledge that Budd was not free to show up for the hearing on June 9, 2006, given that he was incarcerated, but Budd could have requested to participate in the hearing via telephone. Tenn. Code Ann. § 41-21-809 (2006) provides that a “court may hold a hearing under this part at a county jail or a facility operated by the department or may conduct the hearing with video communications technology that permits the court to see and hear the inmate and that permits the inmate to see and hear the court and any other witnesses.” Budd at least could have filed some sort of a written response to the Trial Court’s May 19th order. Unfortunately, nothing was done.

Given that: (1) Budd took no action to prosecute this case once it was filed; (2) almost one year later the Trial Court essentially informed Budd that the case would be dismissed if he took no action; and (3) Budd took no action after receiving the Trial Court’s order, we cannot conclude that the Trial Court abused its discretion by dismissing this case.

### **Conclusion**

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. Costs on appeal are taxed to the Appellant, Larry Budd.

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D. MICHAEL SWINEY, JUDGE