

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JANICE BULLOCK	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 03-cv-3509
CITY OF PHILADELPHIA	:	

MEMORANDUM

Baylson, J

November 29, 2005

The Plaintiff in this case, representing herself pro se, is a former employee of Defendant City of Philadelphia (“City”). Plaintiff filed two separate Complaints in this Court, the first as captioned above, and the second with a Civil Action No. 03-6867. These cases were placed in suspense on June 21, 2004 for a period of time due to Plaintiff’s asserted health problems. At Plaintiff’s request, they were removed from suspense and C.A. No. 03-6867 was consolidated with the above civil action on February 16, 2005.

Discovery was difficult in some respects, but completed pursuant to a pretrial schedule, see Docket No. 21. The City filed a Motion for Summary Judgment in both cases, and the Court held oral argument on August 18, 2005, following which the Court filed a Memorandum and Order dated August 22, 2005 in which the Plaintiff’s first Complaint (C.A. No. 03-3509) was ordered to proceed to trial, but the second Complaint (C.A. No. 03-6867) was dismissed pursuant to the City’s Motion for Summary Judgment. At the conclusion of the hearing on August 18, 2005, and in an Order which followed on August 22, 2005, the Court specifically directed that this case would enter the Court’s trial pool on October 3, 2005 and “should start that day unless a criminal trial is ongoing or will also begin that day, in which event this case will follow the

criminal trial.” The Court further ordered Plaintiff to be prepared for trial in all respects and to file Points for Charge.

A few weeks later, a dispute arose over some trial depositions that the City wished to take. The Court scheduled a hearing on September 27, 2005. At that hearing, Plaintiff requested a postponement of the trial for reasons relating to the City’s alleged discovery violations and because of the Plaintiff’s health. See letter dated September 26, 2005 addressed to the undersigned. Plaintiff also asserted that her health prevented her from attending the deposition as scheduled by the City. In support, Plaintiff submitted a note from a Dr. Beckley dated September 19, 2005.

At the Court hearing on September 27, 2005, and as reflected in an Order issued on September 27, 2005, it appeared that Dr. Beckley had not seen the Plaintiff since September 19, 2005, and his note did not support Plaintiff’s assertion that her medical condition prevented her from attending the deposition and “[did] not prevent her from preparing for and attending her own trial.” The Court concluded:

As the Court has previously indicated, the Plaintiff will be expected to attend all necessary pretrial and trial obligations in this case unless she is actually confined to a medical facility for a serious matter and/or present specific, detailed findings by a physician that she is unable to comply with her obligations in this case.

(Order dated September 27, 2005, Doc. No. 68).

On October 3, 2005, the date of trial, (no criminal trial was starting), Plaintiff called the undersigned’s chambers early in the morning and indicated that she was at Chestnut Hill Hospital and would be late for Court. A transcript was made of the situation and the Court entered an

Order dated October 3, 2005 (Doc. No. 70) which indicated that a message had been left on Plaintiff's answering machine, at her home number, that the Court would dismiss the case unless Plaintiff appeared on October 5, 2005 "with bona fide reasons why Plaintiff did not appear on October 3, 2005 and cannot proceed to trial on October 5, 2005." A message was left on Plaintiff's answering machine containing the substance of the Court's Order.

On October 5, 2005, Plaintiff did not appear. The Court made a record of the circumstances and attempted communications with Plaintiff, the lack of any communication from Plaintiff, and indicated that the Complaint would be dismissed with prejudice. However, on October 5, 2005 at 9:50 p.m., before an order of dismissal was actually prepared or signed, the Plaintiff faxed a series of papers to the Court's chambers, describing medical conditions which Plaintiff asserted prevented her from proceeding to trial. Because the Court had not entered the order of dismissal, the Court instead ordered a hearing on October 21, 2005 "to give Plaintiff an opportunity to show cause why her Complaint should not be dismissed with prejudice." See Order dated October 7, 2005 (Doc. No. 75).

At the hearing on October 21, 2005, the Plaintiff presented some medical records and gave her own testimony as to why she had not appeared for trial on October 3 or October 5, 2005. The Court gave Plaintiff further opportunity to prepare and file a detailed statement containing "facts in chronological order, listing all facts and circumstances that the Plaintiff believes are relevant as to why she did not appear for trial on October 3, 4 or 5, 2005 or contact the Court on those dates prior to sending papers by facsimile at 9:50 p.m. on October 5, 2005, together with

any medical evidence which Plaintiff believes is relevant.”¹

In her filing on October 26, 2005 (Doc. No. 89), entitled “Affidavit of Plaintiff and Motion for Special Relief,” the Plaintiff does document that she was admitted to the Emergency Room of Chestnut Hill Hospital on October 3, 2005, but was discharged on the next day, October 4, 2005, in the afternoon. The Plaintiff gives no details as to where she went or what her condition was when she was discharged from the hospital, and no reason whatsoever why she did not contact the Court immediately upon her discharge on October 4, 2005, or on the morning of October 5, or why she did not appear for her trial on October 5, 2005. Plaintiff did not give the Court an update on her medical condition and/or personal assurances of her intent to go to trial as soon as possible, or any medical reasons why she could not go to trial on October 5, 2005, as would have been expected. It must be noted that Plaintiff frequently contacted the undersigned’s chambers and asked questions of the deputy clerk.

The City has opposed Plaintiff’s Affidavit and Motion for Special Relief, and has taken the position that the Plaintiff’s Complaint should be dismissed with prejudice.

For purposes of considering this Motion, the Court is willing to accept Plaintiff’s assertions as to her medical condition at face value. However, the Court finds from all of the undisputed evidence that notwithstanding Plaintiff’s medical condition:

1. Plaintiff has not presented a good reason why Plaintiff did not communicate with the Court after 9:00 a.m. on October 3 or on October 4, nor why she did not appear in Court on October 5, 2005 or at least contact the Court on that date prior to 9:50 p.m. when she faxed a

¹The Order erroneously mentioned October 4, 2005, but no Court was going to be held that day because of a religious holiday. However, the Court’s chambers was staffed that day, but no phone call was received from Plaintiff.

number of papers to the Court's chambers.

2. Plaintiff has not stated any facts to explain her whereabouts after release from the hospital on October 4, 2005, or on October 5, 2005, so as to prevent her from attending Court or communicating with the Court prior to sending the fax at 9:50 p.m.

3. The Court infers that Plaintiff's reason for not doing so is that she did not want to be put in a position of being forced to proceed to trial on October 5, 2005.

4. Plaintiff's medical evidence as to her medical condition on October 3, 4 and 5, 2005 is set forth in her papers, but the Court finds that it does not meet the requirements which the Court set forth in the Order of September 27, 2005 that she had to present "specific, detailed findings by a physician that she is unable to comply with her obligations in this case," if she believed her medical condition prevented her from proceeding to trial.

5. The closest which Plaintiff comes to this is the presentation of a handwritten note dated October 5, 2005 from one of her doctors, Dr. Gabriel, as follows:

I have seen this patient today and reviewed the current recommendations and treatment of the sub-specialist she has. She has just been discharged from the hospital for uncontrolled hypertension and chest pain, has cervical [illegible] pain and low back pain. I agree that the trial should be postponed until she has gotten the painful conditions controlled (and worked up) and has gotten her blood pressure back in control. I concur with the 90-day postponement.

Exhibit E.

6. The Court does not find that this note by Dr. Gabriel presents specific, detailed findings that Plaintiff was unable to comply with her obligations in this case, specifically to proceed to trial. Just because Dr. Gabriel says "I concur with the 90-day postponement" does not

mean that she has a professional opinion that this Plaintiff is unable to proceed to represent herself at the trial, but rather, seems to indicate that she would go along with what she (incorrectly) assumes to have been a postponement.

7. However, even assuming that Dr. Gabriel's note does satisfy the Court's requirements, as stated in the September 27, 2005 Order, it still does not contain any facts which excuse Plaintiff from appearing in Court or communicating with the Court on October 5, 2005, prior to 9:50 p.m.

8. The Court concludes from all the circumstances that Plaintiff put her own convenience, and her own desire to control the situation, and, inferentially, to prevent any communication with the Court until after October 5, 2005, and considered these things more important than adhering to a Court Order that clearly and unequivocally indicated that the trial would start on October 3, 2005, or if necessary, on October 5, 2005.

9. Because Plaintiff clearly communicated with the Court's chambers on October 3, 2005 (and had called chambers numerous times before about scheduling, motions heard, and courtroom assignments), Plaintiff was familiar with the Court's Deputy Clerk and how to convey or receive information.

10. On the crucial day set for trial (granting that Plaintiff's absence on October 3, 2005 when she was admitted to the hospital was understandable), Plaintiff has no good reason for not contacting the Court on October 5, 2005.

11. The Court also notes that Plaintiff failed to submit Points for Charge and this reflected a continuing lack of adherence to Court regulations – but the Court would not dismiss Plaintiff as a pro se party merely for such infractions.

The leading case in the Third Circuit on sanctions in civil cases is Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984), in which the court enumerated the following factors which must be considered by a district court judge in considering the imposition of sanctions:

- (1) The extent of the *party's* personal *responsibility*;
- (2) The *prejudice* to the adversary caused by the failure to meet scheduling orders and respond to discovery;
- (3) A *history* of dilatoriness;
- (4) Whether the conduct of the party or the attorney was *willful* or in *bad faith*;
- (5) The effectiveness of sanctions other than dismissal, which entails an analysis of *alternative sanctions*; and
- (6) The meritoriousness of the claim or defense.

These factors were examined in detail in Adams v. Trustees of the New Jersey Bureau of Employees Pension Trust Fund, 29 F.3d 863 (3d Cir. 1994).

Application of these six factors to the conduct of Ms. Bullock in this case supports the Court's decision to dismiss her case with prejudice.

1. As to the extent of the party's personal responsibility, Plaintiff is representing herself pro se and has familiarity with Court proceedings significantly greater than that of most pro se litigants. Plaintiff quite ably prepared and presented her papers in opposition to the City's Motion for Summary Judgment, and argued her position in a hearing on August 18, 2005, and was successful in persuading the Court to deny the City's Motion as to one, and perhaps the most significant, aspect of her two claims. In short, Ms. Bullock has nobody to blame but herself for her recent conduct.

2. As to the prejudice to the adversary from the failure to meet scheduling orders, the City was prepared for trial on October 3, 2005 and also on October 5, 2005, and had witnesses

ready to testify. For the Court to reschedule this case for trial would require, given Plaintiff's conduct in the past, continuing uncertainty as to her appearance and would cause the City significant costs of preparation and diversion from other cases pending in the court system.

3. Ms. Bullock has shown some dilatoriness in prior proceedings. As noted above, she did not file Points for Charge as the Court required, and other pleadings have been late.

4. As to whether the Plaintiff's conduct was willful or in bad faith, the Court has concluded from the chronology discussed above that Ms. Bullock willfully and in bad faith failed to appear, or at least communicate with the Court, on October 5, 2005. She has omitted any discussion of her activities on this date in the submission which she filed on October 26, 2005, and the Court has inferred that she delayed the submission until the evening of October 5, 2005 so that she could avoid any communication with the Court, including being forced to go to trial, on October 5, 2005.

5. In consideration of alternative sanctions other than dismissal, the Court does not find any satisfactory alternative sanction other than dismissal. Because Plaintiff is appearing pro se and has insisted that she cannot afford the services of a lawyer, an imposition of a fine, which would be appropriate against an attorney who had failed to appear for a trial, would be punitive and unavailing. The Court has considered delaying Ms. Bullock's case indefinitely, but that is unfair and costly to the City as to require it to renew trial preparation at some indeterminate time in the future. Plaintiff took it upon herself to determine that she would not proceed to trial on October 5, 2005. Whether Plaintiff was medically able to proceed to trial on October 5, 2005 is not the pertinent question, because Plaintiff had an obligation, which had been explicitly explained to her, to give the Court specific facts if she believed her medical condition would

prevent her from going to trial. This was an issue for the Court to decide, not the Plaintiff. No party, pro se or otherwise, can decide for themselves whether their trial should proceed or be continued. Not only did Plaintiff fail to make any communication with the Court on October 5, 2005, the background of the facts allows the Court to confirm that Plaintiff did deliberately avoid communicating with the Court on October 5, 2005, so as to avoid being forced to proceed to trial on that date. If the Court had been presented with specific medical facts on October 5, it is highly likely the Court would have continued the trial. Specifically, the undersigned personally had been in touch with Dr. Gabriel's office on October 3, 2005, and Plaintiff presents no reason why she could not have asked Dr. Gabriel or one of her assistants to call the Court and explain Plaintiff's medical condition over the telephone.

6. As to the meritoriousness of the claim or defense, as the Court indicated in the Memorandum of August 22, 2005, Plaintiff's claim may have merit and the Court does not base the dismissal on any substantive lack of merit.

An appropriate Order follows.

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CITY OF PHILADELPHIA	:	

ORDER

AND NOW, this 28th day of November, 2005, Plaintiff's Motion for Special Relief (Doc. No. 89) is DENIED, and for the reasons stated in the foregoing Memorandum, Plaintiff's Complaint is DISMISSED with prejudice. The Clerk is directed to close this case.

BY THE COURT:

s/Michael M. Baylson
Michael M. Baylson, U.S.D.J.