

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0029

September Term, 2015

CIERRA O. HODGES, et al.

v.

LAWRENCE POLAKOFF

Woodward,
Friedman,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 10, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The single question presented by this case is whether the circuit court abused its discretion by dismissing a case when the plaintiff filed a motion to defer dismissal but, at the hearing, failed to demonstrate (1) a readiness, willingness, and ability to proceed with the case and (2) that the delay was not wholly without justification. Because we conclude that the trial court did not err in finding that the plaintiff's argument failed to satisfy the minimum requirements for deferring entry of dismissal, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Cierra Hodges filed a civil complaint in the Circuit Court for Baltimore City on January 28, 2012, in which she alleged that she had been injured by lead paint poisoning while living in a property owned by the defendants. On November 3, 2014, the Clerk of the Circuit Court issued a “Notification of Contemplated Dismissal” pursuant to Rule 2-507(d).¹ Hodges responded by filing a “Motion to Suspend Rule 2-507” and a corresponding request for a hearing.

At the hearing, Hodges attempted to explain to the trial court why the case should not be dismissed:

¹ Rule 2-507(d) states:

(d) Notification of Contemplated Dismissal. When an action is subject to dismissal pursuant to this Rule, the clerk, upon written request of a party or upon the clerk's own initiative, shall serve a notice on all parties pursuant to Rule 1-321 that an order of dismissal for lack of jurisdiction or prosecution will be entered after the expiration of 30 days unless a motion is filed under section (e) of this Rule.

[Hodges' Counsel]: [S]ome Defendants have been dismissed over the history of this case.

And my office is investigating this case, in light of those prior dismissals. I'm here before Your Honor to say that, you know, I'm ready, willing and able to go forward with this case.

And I'm personally trying to reissue these— well, not trying, I'm personally facilitating the process of getting these [s]ummonses reissued against any unserved [d]efendants in this case. I know I'm looking at the CC list here, and seeing at least some familiar names to me, as far as, you know, Defendants that have been involved in other cases.

So I don't think that this case falls under the category of "dead wood," which is, you know, outlined in our authority in support of deferring the 2-507 dismissal in this case. So, I would be asking again, Your Honor, for a deferral of that dismissal here.

THE COURT: But you can't offer me any facts?

[Hodges' Counsel]: Just my good-faith representations to Your Honor today that, you know, that like I said, I'm reissuing the [s]ummonses for the unserved [d]efendants. That I'm ready, willing, and able to go forward. That the case is not, like I said "dead wood." I mean, that's the best I can answer you.

THE COURT: All right. Well, thank you. I understand you can't answer me what's not there. But as I've said before, I believe that good cause requires a showing of facts. And it is not satisfied by simply a vague assertion that something's going on.

* * *

[M]otions to defer will not be granted in the absence of a factual showing. Not only is there no such showing in the motion, nothing has been offered today that would satisfy that standard. I'm going to deny the motion to defer dismissal.

The circuit court denied the motion and dismissed the case without prejudice. Hodges noted a timely appeal to this Court. Defendants have declined to file a brief in opposition.

ANALYSIS

Hodges claims that the circuit court abused its discretion by denying the motion to suspend dismissal because, according to her, she: (1) demonstrated good cause to defer dismissal; (2) the delay in prosecution was not wholly without justification; and (3) the Defendant did not allege prejudice. From Hodges' point of view, her motion demonstrated an interest in having the issue resolved, and at the hearing, her counsel reiterated that interest, therefore, this case is not the type that Rule 2-507 was designed to "prune" from the docket.

Upon receiving the clerk's notification of contemplated dismissal, a plaintiff has 30 days to file a motion to defer entry of the dismissal. Rule 2-507(e). A plaintiff may also request a hearing on the motion to defer entry of the dismissal. Rule 2-311(f). In response to the notice of contemplated dismissal, a plaintiff is required to show "good cause." The Court of Appeals has given a specialized definition to the term "good cause" as it appears in this Rule, specifically rejecting a focus on plaintiff's diligence and instead focusing on continued interest in resolution. *Powell v. Gutierrez*, 310 Md. 302 (1987). As Judge Harry A. Cole said for the Court in *Powell*: "To show 'good cause,' the party filing the motion to

defer dismissal must *demonstrate* to the court that he is ready, willing, and able to proceed with the prosecution of his claim and that the delay in prosecution is not wholly without justification.” *Id.* at 308 (emphasis added). “In the end, although the court must consider, weigh, and balance these factors, the ultimate decision whether to defer dismissal is within the trial court’s discretion, and the appellate court must give deference to the exercise of that discretion.” *Spencer v. Estate of Newton*, __ Md. App. __, __ No. 364, September Term, 2015, Slip op. at 7 (filed February 25, 2016).

The mere statement that: “I am ready, willing, and able to proceed” does not fulfill the requirement to “demonstrate” a readiness, willingness, and ability to proceed. Rather, a plaintiff must show concrete, tangible steps of trial preparation. Similarly, the plaintiff must show concrete, tangible facts to support that the delay was “not wholly without justification.” In the absence of any concrete facts to support her assertion, we fail to see how the motion could have been resolved otherwise. In any event, we see no abuse of the trial court’s wide discretion in dismissing this case pursuant to Rule 2-507. We, therefore, affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**