3-26-2002

Admark Jewelry Corp v. UPS

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-2221

ADMARK JEWELRY CORPORATION,
Appellant

v.

UNITED PARCEL SERVICE

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Civil Action No. 99-cv-02227
(Honorable Ronald L. Buckwalter)

Submitted Pursuant to Third Circuit LAR 34.1(a)
March 7, 2002

Before: SCIRICA and COWEN, Circuit Judges, and
RESTANI, Judge, United States Court of International Trade*

(Filed March 26, 2002)

*The Honorable Jane A. Restani, Judge, United States Court of International Trade, sitting by designation.

OPINION OF THE COURT

SCIRICA, Circuit Judge.

Admark Jewelry Corporation filed suit against United Parcel Service, Inc. (UPS) in the United States District Court for the Eastern District of Pennsylvania, alleging negligence and breach of contract for the loss or misdelivery by UPS of over 6,000 packages of jewelry. On the date of trial, Admark refused to prosecute the case. The District Court granted UPS' motion to dismiss the case for failure to prosecute under Fed.R.Civ.P. 41(b).

I.

We review an order of dismissal under Fed.R.Civ.P. 41(b) for abuse of discretion. Marshall v. Sielaff, 492 F.2d 917, 918 (3d Cir. 1974). Fed.R.Civ.P. 41(b) provides that "[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of any action or of any claim against him . . . .

[A] dismissal under this subdivision . . . operates as an adjudication on the merits." We have stated

> the authority to dismiss for lack of prosecution, both on defendants' motion and sua sponte, is an inherent . . . control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases . . . . No precise rule can be laid down as to what circumstances justify a dismissal for failure to prosecute, but the procedural history of each case must be examined in order to make that determination. The power of the court to prevent undue delays and to achieve the orderly disposition of cases must be weighed against the policy of law which favors disposition of litigation on its merits.

Marshall, 492 F.2d at 918 (citations and quotations omitted).

II.

After carefully considering the history of this litigation, it is clear the District Court did not abuse its discretion. This case was pending for almost two years before the District Court. During that time, Admark engaged in dilatory conduct. The District Court was forced to warn Admark to comply with pretrial discovery "or else risk the dismissal of [its] claims." On April 23, 2001, one week before trial, Admark's president Phillip Kramer refused to proceed with his deposition unless Admark's counsel was permitted to withdraw from the case. In a telephone conference with the parties, the District Judge repeatedly told Admark if he allowed its counsel to withdraw, the court would not grant a continuance of the trial date.

Despite the District Court's repeated admonitions that it would not grant a trial continuance, Admark filed an Emergency Motion for Continuance on April 27, 2001, which was denied the same day. Nonetheless, on April 30, 2001, the day the trial was scheduled to begin, Admark appeared in court, represented by new counsel, who informed the court he could not proceed unless a continuance were granted. The District Court denied this request and directed Admark to proceed with its case. When it refused to do so, the District Court granted UPS' motion to dismiss the case for failure to prosecute under Fed.R.Civ.P. 41(b). We see no abuse of discretion.

III.

For the foregoing reasons, the order of the District Court dismissing the action for want of prosecution will be affirmed.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Anthony J. Scirica
Circuit Judge