

Reversed and Remanded and Opinion filed October 14, 1999.



In The  
**Fourteenth Court of Appeals**

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NO. 14-98-01067-CV

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**JEFFREY BALAWAJDER, Appellant**

V.

**RICHARD G. BELANGER, G.J. GOMEZ, R. STAUBER, B. BACHMAN, AND RICHARD  
LOSSOW, Appellees**

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**On Appeal from the 12th District Court  
Walker County, Texas  
Trial Court Cause No. 17542**

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**O P I N I O N**

Appellant, Jeffrey Balawajder, appeals from an order dismissing his *pro se, in forma pauperis* suit for want of prosecution and denying his motion to reinstate. Because the trial court abused its discretion in denying the motion to reinstate without a hearing, we reverse.

Appellant is an inmate at the Ellis One Unit of the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID). Appellees are employed by the TDJC-ID at the Ellis One Unit. On July 31, 1991,

appellant filed a civil rights lawsuit alleging that appellees subjected him to cruel and unusual punishment by forcing him to do work beyond the limitations imposed on him by his medical disabilities. At an evidentiary hearing held on July 20, 1998, almost seven years after appellant filed suit, the trial court granted appellees' oral motion to dismiss for want of prosecution. All parties appeared at this hearing. On August 10, 1998, appellant filed a timely, verified motion to reinstate. The next day, the court signed a written order denying "any and all relief sought by Plaintiff" and dismissing "Plaintiff's claims against Defendants." In its order, the court specifically found that "Plaintiff . . . failed to prosecute his case with due diligence." On August 17, 1998, the court denied appellant's motion to reinstate by written notation on the motion. On August 24, 1998, appellant wrote the trial court requesting that it reconsider the denial of the motion to reinstate. Six days later, appellant filed his notice of appeal.

Appellant raises nine points of error complaining of, among other things, the denial of his motion to reinstate. A motion to reinstate a case dismissed for want of prosecution is addressed to the sound discretion of the trial court. *See Maida v. Fire Ins. Exchange*, 990 S.W.2d 836, 839 (Tex. App.--Fort Worth 1999, no pet.). In reviewing whether there was an abuse of discretion, the key question is whether the trial court acted without reference to guiding rules and principles, or in an arbitrary and unreasonable manner. *See id.*

Here, appellant complains in part that the court failed to hold a hearing on his motion to reinstate. A trial court's reinstatement of a cause following a dismissal for want of prosecution is governed by Texas Rule of Civil Procedure 165a. *See Gilbert v. Huber, Hunt, Nichols, Inc.*, 671 S.W.2d 869 (Tex. 1984). Rule 165a(3) requires a trial court to set a hearing on any verified motion to reinstate as soon as practicable. *See TEX. R. CIV. P. 165a(3)*. The language of Rule 165a(3) does not allow the trial court discretion in whether to set a hearing on motions for reinstatement, but requires the court to set a hearing. *See Thordson v. City of Houston*, 815 S.W.2d 550 (Tex. 1991); *see also Rohus v. Licon*, 942 S.W.2d 111, 112 (Tex. App.--Houston [1st Dist.] 1997, no writ). The opportunity for a hearing, therefore, is mandatory. *See id.* The record in the instant case reflects that the trial court denied appellant's timely, verified motion to reinstate without a hearing of any kind. The denial of a motion to reinstate without a hearing is an abuse of discretion. *See id.* Because the trial court abused its discretion by not holding a

hearing on appellant's motion to reinstate, we need not address appellant's remaining points of error. Accordingly, we reverse the judgment of the trial court and remand the case to that court for proceedings consistent with this opinion.

PER CURIAM

Judgment rendered and Opinion filed October 14, 1999.

Panel consists of Justices Yates, Fowler and Frost.

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