

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 15th day of October, 2020.

Present: All the Justices

Brandi Carr,

Appellant,

against

Record No. 190938
Circuit Court No. CL18-3670-00

Sahara Motors, LLC,

Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Portsmouth.

Brandi Carr appeals from the dismissal of her case with prejudice by the Circuit Court of the City of Portsmouth. Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the circuit court erred in dismissing Carr's case with prejudice.

Carr purchased a vehicle from Sahara Motors, LLC ("Sahara") in May 2017 and began experiencing mechanical problems shortly thereafter. She brought a warrant in debt against Sahara in the Portsmouth General District Court. After that warrant was dismissed, she appealed to the Portsmouth Circuit Court.

After Carr noted her appeal, a paralegal from her counsel's office contacted the docket clerk's office to state that the parties had agreed on February 28, 2019 as a potential trial date. According to the written statement of facts signed by the circuit court, Carr proffered that the clerk's office responded to the paralegal that "although an agreed upon date had been selected, it remained tentative until [plaintiff's counsel's] office notified the Clerk's Main Office of the selected date and [plaintiff's counsel] took that to mean by means of a scheduling order." The paralegal sent a scheduling order to counsel for Sahara, but it was never signed or filed with the court because Sahara's counsel withdrew from representation. In January 2019, Carr began engaging in settlement talks with Sahara and there was no further discussion of the scheduling order.

Sahara's president discovered that the case was listed on the court's docket for February 28, 2019 and appeared in court on that day. Carr did not appear because it was her understanding that the case had never been placed on the docket since no scheduling order had been entered. The circuit court dismissed the case with prejudice due to Carr's failure to appear.

Carr's counsel filed a Motion to Reconsider Dismissal, Reopen and Rehear, arguing that the case should not have been set on the docket because there was no scheduling order. After hearing the arguments of both parties, the circuit court denied the motion. In support of its ruling, the court stated that, under the local docket control procedures, scheduling orders are not required for appeals from general district court. According to the written statement of facts, the court "surmised" that the failure to appear was a "failure to follow up on court dates." Carr appeals.

A circuit court's decision whether to grant a motion to reconsider is reviewed for abuse of discretion. *Primov v. Serco, Inc.*, 296 Va. 59, 70 (2018). An abuse of discretion can occur in three principal ways: "when a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; and when all proper factors, and no improper ones, are considered, but the court, in weighing those factors, commits a clear error of judgment." *Landrum v. Chippenham & Johnston-Willis Hosps., Inc.*, 282 Va. 346, 352 (2011) (citation and internal quotation marks omitted).

Procedure 3 of the circuit court's docket control procedures states in relevant part, "All parties to law cases will select a trial date by mutual agreement The parties may contact the docket control clerk to establish the date on the court's calendar." Procedure 4 states in relevant part, "Following the selection of a date, a scheduling order . . . shall be prepared." Procedure 8 provides an exception to the requirement for a scheduling order in civil appeals from the general district court in which both parties appear pro se. Carr argues this exception would not apply here because while Sahara was unrepresented, Carr was represented by counsel.

Whether and when a scheduling order is required in appeals from the general district court to the circuit court is not an issue that we must decide. The written statement of facts states that Carr was misled by the docket clerk into believing that the agreed-upon trial date was not "establish[ed] . . . on the court's calendar" pursuant to Procedure 3. The court then "surmised" that Carr failed to "follow up on court dates."

There is no evidence of an intentional abandonment or reckless disregard for the court's rules. Based upon these facts, the court abused its discretion by dismissing the case with prejudice.

For these reasons, the Court reverses the judgment of the circuit court and remands the case for disposition on the merits. This order shall be certified to the Circuit Court of the City of Portsmouth.

A Copy,

Teste:



Clerk