

**Affirmed and Opinion filed August 10, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-00433-CV**  
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**ALFREDO BOVATI and AUDREY CHREENE, Appellants**

**V.**

**JASON RENAUD and SAMUEL RENAUD, Appellees**

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**On Appeal from the County Civil Court at Law No. 3  
Harris County, Texas  
Trial Court Cause No. 676,656**

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**OPINION**

Alfredo Bovati and Audrey Chreene appeal the dismissal of their case for want of prosecution. They argue the trial court abused its discretion in dismissing the case and for denying their motion to reinstate. We affirm.

Bovati and Chreene were involved in an accident on July 19, 1995, with a car driven by Jason Renaud and owned by Samuel Renaud. On January 10, 1997, Bovati and Chreene sued the Renauds, alleging negligence and negligent entrustment. On April 23, 1997, Bovati and Chreene filed a Brief in Support of Citation by Publication. The citation was published in the Daily Court Review on August 21, 1997. On October 13, 1998, after five prior resets, the

Judge ordered a status conference for January 26, 1999. The order assigned Bovati and Chreene the duty to notify, by certified mail, the attorney ad litem appointed to represent the Renauds or face dismissal of their cause of action for want of prosecution. Bovati and Chreene moved for default judgment on January 25, 1999. The next day, the Court dismissed for want of prosecution, saying the parties had been notified of the status conference but had failed to appear. Bovati and Chreene then filed a motion to reinstate which was denied.

### ***Dismissal for Want of Prosecution***

Bovati and Chreene contend the trial court abused its discretion in dismissing their suit for want of prosecution. A trial court may dismiss a case for want of prosecution when a party fails to appear at a hearing or at trial; when the case has not been disposed of within the time standards promulgated by the Supreme Court; or when a plaintiff fails to prosecute his or her case with due diligence. *See* TEX. R. CIV. P. 165a; *Rizk v. Mayad*, 603 S.W.2d 773, 776 (Tex.1980); *Veterans' Land Bd. v. Williams*, 543 S.W.2d 89, 90 (Tex.1976).

Bovati and Chreene argue the trial court abused its discretion because they appeared at the status conference; it was the attorney ad litem who failed to appear. They bring forward no evidence, however, to support their contention. The order granting the dismissal does not indicate which party failed to appear. However, even if Bovati and Chreene appeared for the conference, they had been previously ordered to notify the attorney ad litem or suffer the dismissal of their suit. Appellants failed to show any proof of service; the trial court was within its discretion in dismissing the case for want of prosecution.<sup>1</sup>

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<sup>1</sup> On appeal, the Renauds attempted to show that they gave Bovati and Chreene their address and phone number at the accident scene; filed a police report which included their address and phone number; contacted Bovati and Chreene a few days after the accident and referred them to their insurance carrier; and were, at all times, properly listed in the local phone book. This evidence, however, was not before the trial court and we have refused to consider it in our analysis.

***Motion to Reconsider***

Bovati and Chreene claim the court abused its discretion in denying their motion to reinstate. A court will reinstate a case upon finding the failure of the party or his attorney was not intentional, or the result of conscious indifference, but was due to an accident or mistake or that the failure has been otherwise reasonably explained. *See* TEX. R. CIV. P. 165(c).

Appellant's motion alleged only that they appeared at the conference, and that they also believed the attorney ad litem would appear. As stated above, their appearance is irrelevant; due diligence required they notify the attorney ad litem by certified mail. Appellant's mere belief that the attorney ad litem would appear is insufficient. Appellants brought forward no evidence to show their failure was not intentional or the result of conscious indifference. The trial court was within its discretion in denying appellant's motion to reinstate.

Accordingly, the trial court's order of dismissal for want of prosecution is affirmed.

/s/     J. Harvey Hudson  
Justice

Judgment rendered and Opinion filed August 10, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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