

Affirmed and Opinion filed November 4, 1999.



In The

Fourteenth Court of Appeals

NO. 14-98-01172-CV

DONALD J. JACKSON, Appellant

V.

**TEXAS EMPLOYMENT COMMISSION and
JOHN BLUDWORTH MARINE, INC., Appellees**

**On Appeal from the 129th District Court
Harris County, Texas
Trial Court Cause No. 96-54069**

OPINION

Appellant appeals from an order dismissing his *pro se, in forma pauperis* suit for want of prosecution. We affirm.

On October 24, 1996, appellant sued appellees the Texas Employment Commission (now the Texas Workforce Commission) and John Bludworth Marine, Inc.(appellant's former employer), seeking judicial review of the Commission's decision denying appellant unemployment benefits. Appellant also filed an uncontested affidavit of inability to pay costs. Appellant contends he attempted service himself and then

requested the district clerk, and the trial court to direct the district clerk, to issue a citation for service of process. The record does not, however, reflect that appellant obtained service. On July 9, 1998, the trial court signed an order dismissing appellant's case for want of prosecution. On July 28, 1998, appellant filed a motion to reinstate and a request for findings of fact and conclusions of law. The record does not show any action taken on these matters. On September 17, 1998, appellant filed a notice of appeal.

In two points of error, appellant complains the trial court abused its discretion in dismissing his case for want prosecution and in refusing to reinstate his case. It is settled law that the trial court has the inherent power to dismiss cases not prosecuted with due diligence. *See State v. Rotello*, 671 S.W.2d 507, 508-9 (Tex. 1994). This inherent authority stems from the court's power to maintain and control its docket and is in addition to its power to dismiss under Texas Rule of Civil Procedure 165a. *See Maida v. Fire Ins. Exchange*, 990 S.W.2d 836 (Tex. App.--Fort Worth, n. pet. h.); *see also Shook v. Gilmore*, 951 S.W.2d 294, 296 (Tex. App.--Waco 1997, pet. denied). Rule 165a authorizes a trial court to dismiss a case when: (1) a party fails to appear at a trial or hearing; or (2) a case is not disposed of within the Texas Supreme Court's time standards. *See TEX. R. CIV. P. 165a*; *see also Rampart Capital Corp. v. Maguire*, 974 S.W.2d 195, 197 (Tex. App.--San Antonio 1998), *pet denied*; 1999 W.L. 450855 (Tex. 1999) (J. Hecht dissenting).¹

Review of a dismissal for want of prosecution or of a motion to reinstate is under a clear abuse of discretion standard. *See MacGregor v. Rich*, 941 S.W.2d 74, 75 (Tex. 1997), *Maida*, 990 S.W.2d at 839. The reviewing court will find an abuse of discretion if the trial court acted without reference to any guiding rules and principles or in an arbitrary or unreasonable manner. *See id.* Because the trial court's order in this case does not specify the grounds for dismissal, it may be affirmed on any proper ground that supports dismissal. *See Rampart*, 974 S.W.2d at 197; *see also Shook*, 951 S.W.2d at 296.

Appellant's only contention is that because he is indigent, the trial court should not have dismissed his case without directing the district clerk to issue a citation for service of process. Under Texas Rule of

¹ Justice Hecht suggested that the "conscious indifference" standard should be applied to reinstatement of a case dismissed under Rule 165a or the court's inherent authority.

Civil Procedure 145, a *pro se* plaintiff who files an affidavit of indigency is entitled to the issuance of citation. *See Aguilar v. Stone*, 901 S.W.2d 955 (Tex. App.--Houston [1st Dist.] 1995, orig. proceeding). Although appellant was entitled to issuance of a citation, it was his responsibility, as the requesting party, to ensure that service was properly accomplished. *See Weaver v. E.Z. Mart Stores*, 942 S.W.2d 167, 169 (Tex. App.--Texarkana 1997, no writ); *see also Aguilar* 901 S.W.2d at 955. There is nothing in the record to support appellant's contention that he requested issuance of a citation or otherwise exercised diligence to ensure that proper service was accomplished. Accordingly, we cannot say the trial court abused its discretion in dismissing appellant's case for want of prosecution and refusing to reinstate it. The judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed November 4, 1999.

Panel consists of Yates, Fowler and Frost.

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