IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JANICE GRANTON,	:	
	:	**C.A. No: K13C-11-001 RBY**
_____Plaintiff,	:	
	:	
v.	:	
	:	
DONALD JOHNSON, JR., and	:	
JOANNA G. JOHNSON,	:	
	:	
Defendants.	:	

Submitted: November 17, 2014
Decided: December 10, 2014

Upon Consideration of Defendants'
Motion to Dismiss
DENIED

ORDER

Janice Granton, *Pro se*.

David L. Baumberger, Esquire, Law Offices of Chrissinger & Baumberger, Wilmington, Delaware for Defendants.

Young, J.

SUMMARY

The Court is presented with Donald Johnson, Jr.'s and Joanna G. Johnson's ("Defendants") Motion to Dismiss for want of prosecution. Defendants' motion arises out of Janice Granton's ("Plaintiff") failure to comply with this Court's August 7, 2014 Order. On that same date, Plaintiff's counsel voluntarily withdrew from representation. The Court's Order required Plaintiff to indicate whether she would be retaining replacement counsel or whether she would be proceeding *pro se*. Defendant's motion, at this point, is premature. The degree of Plaintiff's indifference to the litigation, and the delay she has caused, is not so great as to warrant immediate termination of the litigation. At the moment, there has been only one instance of neglect on Plaintiff's part. Regarding in particular *pro se* litigants, efforts affording the opportunity to remedy such parties' failures to litigate are to be provided before dismissal. Thus, Defendants' Motion to Dismiss is **DENIED** at this juncture.

FACTS AND PROCEDURES

Plaintiff filed a Complaint against Defendants on November 6, 2013. By her Complaint, Plaintiff alleges she was attacked by the Defendants' dog on November 7, 2011, while walking in front of their house in Dover, Delaware. Plaintiff was initially represented by the firm of Young & Malmberg, P.A. Her counsel withdrew from representation on August 7, 2014. On this date, this Court issued an Order providing Plaintiff until September 12, 2014, to declare whether she was hiring new counsel or proceeding *pro se*. Plaintiff did not comply with this Order.

STANDARD OF REVIEW

Pursuant to Superior Court Civil Rule 41, it is "within the sound discretion of the Court" to dismiss an action for "want of prosecution."[1] This authority draws from the Court's "inherent power to manage its own affairs and to achieve orderly and expeditious disposition of its business."[2] "The purpose is to dispose of cases when necessary, not to allow parties to maintain a faint spark of life in their litigation."[3] In considering such motions to dismiss, the Court must balance the dual policy considerations of "giving litigants a day in Court" and the interests of judicial economy.[4] Where delay is caused by "gross neglect and lack of attention," dismissal is appropriate.[5] By contrast, where the delay is unavoidable, "the parties should not be made to pay for circumstances beyond their control."[6]

DISCUSSION[7]

Not more than a week ago, this Court issued an opinion involving similarly

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[1] *Ayers v. D.F. Quillen & Sons, Inc.*, 188 A.2d 510, 511 (Del. 1963); Super. Ct. Civ. R. 41.

[2] *Draper v. Med. Ctr. Of Delaware*, 767 A.2d 796, 798 (Del. 2001) (internal quotations omitted).

[3] *Wilmington Trust Co. v. Barry*, 397 A.2d 135, 138 (Del. Super. Ct. 1979) (internal quotations omitted).

[4] *Park Ctr. Condominium Council v. Epps*, 723 A.2d 1195, 1199 (Del. Super. Ct. 1998).

[5] *Id.*

[6] *Id.*

[7] As the Plaintiff has not filed a response to Defendant's motion, the Court considers only Defendant's arguments.

situated parties.[8] Essentially the same reasoning applies in this case.

The Delaware Supreme Court has unequivocally recognized the right of trial courts to dismiss actions for want of prosecution under their "inherent power to manage [their] own affairs and to achieve orderly and expeditious disposition of [their] business."[9] The type of behavior calling for dismissal has been described as "gross neglect and lack of attention."[10] However, the Supreme Court qualified this authority in matters involving *pro se* disputants. Trial courts are to "make some effort to get the case back on track before dismissing for failure to prosecute."[11]

In addressing motions to dismiss under Rule 41(b), this Court has, by analogy, considered the *Christian v. Counseling Resource Assoc., Inc.* line of cases,[12] recently decided by the Delaware Supreme Court.[13] The Supreme Court's imploration in *Draper v. Med. Ctr. Of Delaware* (a case contemplating Rule 41(b)) that courts attempt to "get the case back on track," is akin to its motivation in *Christian* to curtail

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[8] *Brian Johnson v. Kathleen Gudzune*, Del. Super. Ct., C.A. K13C-09-41, Young, J. (December 5, 2014).

[9] *Draper*, 767 A.2d at 798.

[10] *Park Ctr.*, 723 A.2d at 1199.

[11] *Draper*, 767 A.2d at 798.

[12] 60 A.3d 1083 (Del. 2013); *Hill v. DuShuttle*, 58 A.3d 403 (Del. 2013); *Adams v. Aidoo*, 58 A.3d 410 (Del. 2013).

[13] *Johnson*, C.A. K13C-09-41 at p. 4-5.

the hasty disposition of cases, without considering their merits.[14] This Court, therefore, reviews the six factors enumerated by the *Christian* court in determining whether Plaintiff's delay in the litigation process, warrants termination of the action:

> (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal; and (6) the meritoriousness of the claim or defense.[15]

The six factors articulated by the *Christian* line of cases, support the judicial preference for having cases decided on the merits. In applying these factors to the nearly identical circumstances in *Johnson*, this Court notes that it was Plaintiff's first act of dalliance.[16] Indeed, in contemplating the first consideration, whether the party is personally responsible for the delay, even though this Court found that Plaintiff solely caused the lag, Plaintiff's misconduct paled in comparison to the parties in the *Christian* cases.[17] Much was the same reasoning when reviewing the second and third factors: whether the adversary suffered prejudice and whether there was a history of

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[14] *Christian*, 60 A.3d at 1087 ("[t]he trial court's refusal to step in when asked to resolve discovery difficulties, and thereby avoid the ultimate sanction of dismissal, was an abuse of discretion").

[15] *Id*., at 1087.

[16] C.A. K13C-09-41 at p. 5-6.

[17] *Id*., (citing *Adams,* 58 A.3d at 413 ("[t]he trial court gave Adams numerous extensions, and Adams had no excuse for her failure to comply with the deadlines"); *see also Hill*, 58 A.3d at 406 (holding that one "factor alone, did not justify imposition of the most severe sanction available to the court")).

dilatoriness. This one instance of misconduct simply did not fit.[18] In the same way, Plaintiff's lone dereliction in the present litigation, does not warrant dismissal.

The fourth, fifth, and sixth *Christian* prongs, as applied to the case at bar, likewise, do not indicate a different path. The fourth factor instructs courts to consider whether the party has acted in bad faith in causing the delay. Generally speaking, bad faith consists of repeated insubordination, after several reproaches by a court.[19] This opinion is the first reprimand issued by the Court, and, as of yet, the Court is unaware of Plaintiff's reason for missing the deadline. Fifth, courts are to ponder whether other sanctions are available and would be effective. Again, this Court has not issued any sanctions at this point. There are alternatives to dismissal at its disposal. Finally, the Court reviews the meritoriousness of Plaintiff's claim. It is too early, at this stage of the litigation, to pass any ultimate judgment on the worthiness of Plaintiff's claim. It is evident that these six factors weigh against dismissing the Plaintiff's claim at this time.

The Court recognizes that Defendants cite to this Court's earlier opinion, *Jonason v. North Silver Lake, LLC*, where the Plaintiff, like the Plaintiff in the instant matter, also failed to declare whether he planned to retain new counsel or proceed *pro se*.[20] In *GrantJonason*, this Court granted the Defendant's motion. However, the

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[18] *Id.*

[19] *See e.g., Adams*, 58 A.3d at 413 ("Finally...Adams' refusal to provide discovery was willful...[she] simply did not think she should have to reveal information she considered to be private and irrelevant").

[20] 2014 WL 4782814 at *1 (Del. Super. Ct. Sept. 23, 2014).

Jonason Plaintiff, unlike the Plaintiff in the case at bar, had, at that point, shown a repeated tendency to ignore court orders.[21] This is Plaintiff's first instance of dilatoriness. The situations are not, from this Court's perspective, *yet* analogous. As indicated, the Supreme Court has instructed that Delaware courts are to give consideration to a *pro se* plaintiff's inexperience in ruling upon motions to dismiss for failure to prosecute.[22] To dismiss this case at this time would seem precipitant.

With this in mind, the Court **DENIES** the Defendants' motion, further instructing that Plaintiff is to make herself available to Defendants and to this Court for a Scheduling Conference, regarding her representation status going forward.

CONCLUSION

Despite Plaintiff's failure to reply to this Court's Order, it would be, at this nascent stage of the litigation, premature to dismiss Plaintiff's suit for want of prosecution. Plaintiff has not yet displayed the requisite level of neglect warranting such action by the Court. Defendants' Motion to Dismiss is, therefore, **DENIED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary

[21] 2014 WL 4782814 at *1 (dismissing the case as "Plaintiff has not identified any experts to date, ***and*** has not indicated whether he will proceed *Pro Se* or obtain new counsel")(emphasis added).

[22] *Draper,* 767 A.2d at 798.

cc: Counsel
Janice Granton, *Pro se*
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