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Ninth Circuit:

Judge Klausner Failed to Engage in Appropriate Analysis

Libel Action Was Axed When Pro Se Plaintiff Did Not Appear at Pre-Trial Conference; Panel Says Relief Should Have Been Granted After the Plaintiff Put Forth an Excuse Reflecting Good Faith on Her Part

By a MetNews Staff Writer



Alice Lee Giannetta is seen in a 2017 publicity shot as Mrs. New York America. Now a lawyer, the Ninth U.S. Circuit Court of Appeals on Thursday ordered reinstatement of her libel action against Mrs. World, Inc. and others which District Court Judge R. Gary Klausner had dismissed for lack of prosecution, an action he declined, upon motion, to undo.

The Ninth U.S. Circuit Court of Appeals has reinstated an action for libel and other torts against the company that stages the Mrs. World beauty contests, holding that District Court Judge R. Gary Klausner of the Central District of California failed to engage in an appropriate analysis in denying a motion to be relieved from his order dismissing the action.

Suing Mrs. World, Inc., the estate of its CEO, and its vice president is New York/New Jersey attorney Alice Lee Giannetta, who in 2016 won the title of “Mrs. New York America,” was crowned as Mrs. Hong Kong in 2017, and later that year became “Mrs. World.” She was emcee of the event in 2019.

Giannetta, who was born in Taiwan, was allegedly asked by

David Marmel, the CEO (now deceased), to use her contacts in Sri Lanka to arrange for the contest to be held there in 2020. According to her complaint, she lined it up; relations with Marmel and Mrs. World Vice President Tana Johnson (a former Mrs. Montana) soured; she severed her connections with the contest; the defendants issued a press release falsely asserting that she had been booted out, had taken company funds, and was “a liar and a thief.”

She sued for libel, intentional interference with prospective economic advantage, and invasion of privacy.

Klausner scuttled her action. An Aug. 16, 2021 minute order says:

“Case called. Plaintiff is not present. Court and defense counsel confer. There has been no communication with the Court by the plaintiff and no pretrial documents have been filed. The Court orders the matter dismissed for lack of prosecution.”

Motion for Relief

On Oct. 20, 2021, Giannetta made a motion under Federal Rule of Civil Procedure 60(b) which provides:

“On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: [¶] (1) mistake, inadvertence, surprise, or excusable neglect.”

The plaintiff said in a declaration: “I recently purchased a new smartphone” and “failed to properly sync my computer’s work calendar to my new smartphone device.” She added that she “left town” on Aug. 11 “for an unexpected and urgent family matter, and in my haste only had my smartphone with me, not my work computer,” representing:

“Therefore, I was unaware and forgotten that I had an August 16 court appearance.”

Motion Denied

Klausner denied the motion on Oct.12, 2021, reciting Giannetta’s statement that she failed to sync her cell phone, and saying:

“Plaintiff states that this inaction qualifies as an inadvertent mistake and excusable neglect and asks that the Court set aside the dismissal...so that the parties may continue finalizing their settlement agreement...The Court finds that Plaintiff has not presented sufficient good cause to warrant relieving her of dismissal.”

He went on to say:

“Though she had an urgent family matter to attend to, the Court finds Plaintiff’s statement that she was ‘unaware’ of the pretrial conference appearance...disingenuous and not excusable neglect.

“As a pro se litigant, it is Plaintiffs responsibility to keep track of all filing deadlines and appearances in the case. Additionally, the Court notes that while Plaintiff is a pro se litigant, she has also represented that she, herself, is an attorney. In light of this fact, any deflection of responsibility to defense counsel to alert Plaintiff or her ‘representative’ of hearing dates, or to confirm their travel plans, is particularly inexcusable.

“This case has been pending for over a year and the scheduled trial date of August 31, 2021 has now passed, in light of the above facts, including that the case was in the late stages of litigation, that Plaintiff did not file any pretrial documents with the Court, and that Plaintiffs failure to appear at the pretrial conference was due to inexcusable neglect, the Court finds that there is danger of prejudice to the Defendant if the dismissal is set aside.”

Ninth Circuit’s Opinion

Reversal came in an opinion signed by Circuit Judges Susan P. Graber, Jacqueline H. Nguyen, and Richard A. Paez. “Prejudice” to the opposing party, the Ninth Circuit’s opinion points out, is only one factor to be taken into account, under precedent, and as to that factor, it disagreed with Klausner’s assessment.

The judges declared:

“Here, the district court failed to engage in the appropriate equitable analysis. Having conducted the analysis ourselves, we conclude that Giannetta is entitled to relief under Rule 60 in light of the minimal prejudice to defendants, short length of delay, and Giannetta’s apparent good faith....We reverse the judgment and remand to the district court for further proceedings.”

The case is *Giannetta v. Marmel*, 21-56142.

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