

Russell L. and Sally KIKER *v.* Robert W. McCORKINDALE

99-544

991 S.W.2d 605

Supreme Court of Arkansas  
Opinion delivered June 10, 1999

APPEAL & ERROR — TRIAL COURT NEVER REQUESTED TO ACT ON  
PLEADINGS — PETITION FOR WRIT OF MANDAMUS DENIED. —

Where the record failed to reflect that the trial court was solely at fault, especially since the record revealed that the court was never requested to act on the many pleadings filed in the case, the petitioners' request for writ of mandamus from the respondent to enforce the circuit court's early order by dismissing plaintiff's complaint was denied.

Petition for Writ of Mandamus; denied.

*J.D. Moon*, for petitioners.

No response.

**P**ER CURIAM. Since the circuit court entered its order on April 29, 1996, to compel plaintiff David Muszynski to

answer the defendants Russell L. and Sally Kikers' interrogatories and requests for documents, on or before May 15, 1996, there have been at least sixteen motions, responses, or other pleadings filed in this matter. Nonetheless, the record fails to reflect the respondent Robert W. McCorkindale, Circuit Judge, has been asked to set a hearing to rule on any of those motions or requests, the last of which was filed on April 5, 1999. Apparently, after plaintiff obtained new counsel sometime in June of 1998, plaintiff has responded to all of the defendants' motions, but the defendants' position has been one indicating plaintiff's responses are now too late and petitioners' discovery responses and requests should be abated. The record fails to reflect the circuit court was requested to rule on the defendants' motion to abate discovery.

[1] Obviously, this is a suit that has lingered too long in the judicial system, but the record fails to reflect the trial court is solely at fault, especially since the record reveals the court was never requested to act on the many pleadings filed in this case. Therefore, we deny the defendants/petitioners' request for writ of mandamus from the respondent to enforce the circuit court's early order of April 29, 1996, by dismissing plaintiff's complaint, especially since plaintiff has filed responses to the defendants' discovery requests beginning in June of 1998, and no hearing had previously been requested by the parties or held by the circuit court, bearing on those discovery requests and responses.