



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION
215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

ARCH A. MOORE, JR.
Governor

November 13, 1985

William E. King
102 North Court Street
Lewisburg, WV 24901

Jerry A. Childress
821 Salem Avenue, S.W.
Roanoke, VA 24016

RE: Jerry A. Childress V Mr. and Mrs. Albert Williamson
Docket No.: HR-342-85

Dear Mr. King and Ms. Childress:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Jerry A. Childress V Mr. and Mrs. Albert Williamson/Docket No.: HR-342-85.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,


Howard D. Kenney
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

JERRY A. CHILDRESS,
COMPLAINANT,

V

DOCKET NO:HR-342-85

MR. & MRS. ALBERT WILLIAMSON
RESPONDENT.

ORDER

On the 9th day of October 1985, the Commission reviewed Hearing Examiner James Gerl's Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order.

By this Order, a copy of which to be sent by certified mail, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A CONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 8th day of November 1985

RESPECTFULLY SUBMITTED,

Nathaniel G. Jackson
CHAIR/VICE-CHAIR
WV HUMAN RIGHTS COMMISSION

STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

RECEIVED

AUG 30 1985

W.V. HUMAN RIGHTS COMM.

JERRY A. CHILDRESS,
COMPLAINANT,

V.

DOCKET NO HR-342-85

MR. AND MRS. ALBERT WILLIAMSON,
RESPONDENTS.

PROPOSED ORDER AND DECISION

A public hearing was convened for this matter on July 8, 1985, in Lewisburg, West Virginia. The complaint was filed on January 12, 1985. A Status Conference was held on May 10, 1985.

At hearing, counsel for the Human Rights Commission moved for a continuance, and that motion was denied. Also at hearing, respondent made a motion to dismiss for failure to proceed, and the motion was granted. Both such rulings, made on the record at the hearing, are incorporated by reference herein.

FINDINGS OF FACT

1. On May 13, 1985, counsel for the Commission sent a letter to complainant advising her that the hearing for this matter would be held on July 8, 1985, at 9:30 a.m., at the Courthouse in Lewisburg, West Virginia.

2. Complainant failed to contact counsel for the Commission regarding the impending hearing date.

3. Because of complainant's silence, counsel for the Commission made attempts to contact complainant and he finally reached her by telephone on Friday, July 5, 1985, one business day before the hearing. In that conversation, complainant informed counsel for the Commission for the first time that she would not attend the hearing because of problems relative to leaving her children.

4. Complainant failed to appear at the duly scheduled hearing for this matter. At no time did the complainant contact the Hearing Examiner to request that she be excused from attending the hearing.

CONCLUSION OF LAW

1. Complainant has failed to diligently prosecute her complaint and such complaint should be dismissed, with prejudice.

DISCUSSION

Complainant has failed to diligently prosecute her complaint. She failed to appear at the duly scheduled hearing for this matter.

Nearly two months prior to the hearing date, counsel for the Commission sent complainant a letter advising her of the hearing date. At no time did she telephone or write to counsel for the Commission regarding any difficulty she might have had in attending the hearing. Only when counsel for the Commission was able to contact complainant by telephone on the business day before the hearing, did complainant inform counsel for the Commission that she would not be able to attend the hearing.

Complainant failed to appear at the hearing herein. She made no attempts to contact the Hearing Examiner to request that she be excused from attending the hearing. Her failure to appear at the hearing is inexcusable and is grounds for dismissal. Emergency Rules Pertaining to Practice and Procedure Before the West Virginia Human Rights Commission, Sections 7.06 (a) (3), 7.06 (a) (1).

Once an individual files a complaint, she has a duty to diligently prosecute her complaint. In the instant case, complainant's failure to cooperate with counsel for the Commission, and her failure to inform counsel for the Commission of any problems she had in being present for the hearing until he called her on the Friday before the Monday hearing, indicate that complainant did not diligently prosecute her complaint. Complainant's problems concerning leaving her children may well have been good cause for a continuance if complainant had timely informed counsel for the Commission of said problem. Instead,

however, complainant merely waited. Her failure to inform counsel for the Commission of the problem is inconsistent with her duty to diligently prosecute her complaint. Her cavalier attitude relative to the hearing and her attendance therein should not be condoned.

Because complainant has failed to appear at a duly scheduled hearing and because complainant has not diligently prosecuted her complaint, justice requires that the complaint be dismissed.

PROPOSED ORDER

In view of the foregoing, the Hearing Examiner hereby recommends that the Commission dismiss the complaint in this matter, with prejudice.



James Gerl
Hearing Examiner

ENTERED: August 29, 1985