

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-338

APRIL TERM, 2005

John Tracy Adams II and	}	APPEALED FROM:
Adams Family Properties, Inc.	}	
	}	
v.	}	Rutland Superior Court
	}	
Town of Fair Haven, John Lulek,	}	
Robert Richards, John Seamans and Jay Brown	}	DOCKET NO. 357-6-99 Rdcv

Trial Judge: Richard W. Norton

In the above-entitled cause, the Clerk will enter:

¶ 1 Appellant Adams Family Properties, Inc., appeals from the trial court’s order, on remand, dismissing its complaint as untimely under the terms of this Court’s prior entry order. AFP argues that the trial court erred by ignoring the purpose of our remand order. We affirm.

¶ 2 The facts underlying this dispute are set forth in our previous entry order, which affirmed the trial court’s order granting summary judgment in part, and reversed and remanded in part. See Adams v. Town of Fair Haven, Docket No. 2003-340 (Vt. March 17, 2004). Briefly restated, John Tracy Adams filed a breach-of-contract complaint against appellees. Appellees filed a motion for summary judgment. The trial court denied the motion and, at the same time, ordered AFP joined as a party. Although counsel entered an appearance on behalf of AFP, AFP did not formally adopt the claims raised in Adams’ complaint nor did it raise any additional claims on its own behalf. The trial court then sua sponte granted summary judgment for appellees on all claims raised by either Adams or AFP. On appeal, we affirmed the trial court’s decision with respect to Adams, but we reversed and remanded the court’s order with respect to AFP. We explained that AFP had not had an opportunity to demonstrate that material questions of fact remained before the entry of summary judgment. In remanding the case, we stated:

In view of our disposition with respect to Adams, we revisit the status of AFP to avoid more procedural confusion on remand. Although the court ordered AFP to be joined, no party took any action to effectuate this order. As a result, AFP was never required to plead; its counsel simply filed a notice of appearance without filing a complaint. However, by virtue of the unappealed orders in this case, AFP is limited to [42 U.S.C.] § 1983 claims. Thus, to implement the remand, AFP is directed to file and serve a complaint within thirty

days of the decision, stating its § 1983 claims. Further proceedings will be based upon this complaint.

Id.

¶ 3 The Court’s entry order was issued on March 17, 2004. On April 15, 2004, AFP served its complaint on appellees. The trial court received AFP’s complaint on April 19, 2004. Appellees moved to dismiss the complaint as untimely, and the trial court granted their request. The court explained that it was bound by this Court’s decision, which contained an unambiguous order as to when the complaint needed to be filed. Because AFP failed to comply with this order, the trial court dismissed its complaint. AFP appealed.

¶ 4 AFP argues that the court erred in dismissing its complaint because it substantially complied in

good faith with this Court's directive and mailed its complaint within the thirty-day period. AFP maintains that the trial court must carry out this Court's specific directions "as interpreted in light of the opinion," and the spirit of this Court's opinion was that AFP had not been given a fair opportunity to present its claims to the trial court before the entry of summary judgment, and it must be given an opportunity to present its claims. According to AFP, this was the clear purpose of the remand, and thus its failure to abide by the thirty-day requirement should not have affected the validity of its complaint.

¶ 5 We find no error. "In carrying out a mandate of this Court, the trial court is limited to our specific directions as interpreted in light of the opinion." Halpern v. Kantor, 139 Vt. 365, 367, 428 A.2d 1132, 1134 (1981). We reject AFP's assertion that the trial court ignored its obligation to interpret the Court's order "in light of the opinion." The Court's order in this case was specific and it did not allow for interpretation. The order clearly required AFP to file its complaint within thirty days to implement the remand. "Substantial compliance" was not enough. Because AFP failed to file its complaint as directed by this Court, the complaint was properly dismissed.

¶ 6 AFP cites State v. Gomes, 166 Vt. 589, 690 A.2d 351 (1996) (mem.), and State v. Higgins, 156 Vt. 192, 588 A.2d 1062 (1991) to support its contention that the trial court should have followed the "spirit" of this Court's order rather than its letter. AFP's reliance is misplaced. In Gomes, we found that a substantial change in the evidence on remand constituted such "exceptional circumstances" that neither this Court nor the district court was bound by our earlier disposition of the case. 166 Vt. at 591, 690 A.2d at 353. No similar exceptional circumstances exist here. In Higgins, we reversed and remanded after finding that the trial court had not followed our order on remand. We reiterated that, when a case is remanded, the trial court must follow the directives set forth by this Court. 156 Vt. at 193, 588 A.2d at 1062-63; see also Coty v. Ramsey Assocs., Inc., 154 Vt. 168, 171, 573 A.2d 694, 696 (1990) (on remand, trial court is "limited to following our specific directions as interpreted in light of the opinion."). Neither of these cases support AFP's argument. Instead, they reaffirm the guiding principle for proceedings on remand, a principle that the trial court adhered to in this case.

¶ 7 AFP's reliance on In re Mullestein, 148 Vt. 170, 174, 531 A.2d 890, 892-93 (1987), is equally misplaced. That case addresses whether statutory language should be considered directory or mandatory, and we find it inapplicable here. As previously discussed, the Court issued a specific order in this case that was binding on the trial court as the law of the case. See Higgins, 156 Vt. at 193, 588 A.2d at 1063 ("When a case is remanded, our decision is the law of the case on the points presented throughout all the subsequent proceedings.") (internal quotation marks and citation omitted). AFP's failure to abide by the terms of our order justified the dismissal of its complaint.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned

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