

Reverse and Remand; Opinion Filed September 7, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-01114-CV

PAULA WILLIAMS, Appellant

V.

FIDEL MORENO, SR. AND FIDEL MORENO, JR., Appellees

**On Appeal from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-15-06413-A**

MEMORANDUM OPINION

Before Justices Bridges, Fillmore, and Stoddart
Opinion by Justice Stoddart

Paula Williams appeals the trial court's denial of her motion to reinstate her lawsuit against Fidel Moreno, Sr. and Fidel Moreno, Jr. In a single issue, Williams asserts the trial court erred by denying her motion to reinstate. We reverse the trial court's order and remand the cause for further proceedings.

Williams sued the Morenos and the Morenos timely filed their answer. On May 23, 2016, the trial court issued an order stating the parties failed to file a scheduling order and, if the parties did not submit a proposed agreed scheduling order by June 17, 2016, the "case will be dismissed on that same date under the Court's inherent power for failure to follow a Court Order and/or failure to prosecute." On June 23, 2016, the trial court dismissed the case for want of

prosecution and failure to follow a court order. Two weeks later, Williams filed an unopposed verified motion to reinstate the case, which was overruled by the operation of law.

Williams’s appellate arguments are based on rule 165a(3), which, among other things, requires the trial court judge to “set a hearing on the motion [to reinstate] as soon as practicable. The court shall notify all parties or their attorneys of record of the date, time and place of the hearing.” TEX. R. CIV. P. 165a(3). An oral hearing is required on any timely filed motion to reinstate and the trial court has no discretion to fail to hold a hearing. *See Thordson v. City of Houston*, 815 S.W.2d 550 (Tex. 1991) (per curiam); *see also Howard v. Lowery*, No. 05-15-01380-CV, 2017 WL 1536494, at *2 (Tex. App.—Dallas Apr. 26, 2017, no pet.) (mem. op.).

Once Williams filed her motion to reinstate, the trial court was required to set a hearing as soon as practicable. *See* TEX. R. CIV. P. 165a(3); *see also Thordson*, 815 S.W.2d at 550; *Howard*, 2017 WL 1536494, at *2. However, the record shows the trial court never scheduled or held a hearing on Williams’s motion and simply allowed the motion to be overruled by operation of law. We conclude the trial court erred by failing to conduct a hearing on Williams’s motion to reinstate. We sustain Williams’s first issue.¹ We reverse the trial court’s order and remand for further proceedings.

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/Craig Stoddart/
CRAIG STODDART
JUSTICE

¹ We do not consider Williams’s argument that her motion showed her failure to follow the trial court’s order was not intentional or the result of conscious indifference. *See* TEX. R. APP. P. 47.1.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

PAULA WILLIAMS, Appellant

No. 05-16-01114-CV V.

FIDEL MORENO, SR. AND FIDEL
MORENO, JR., Appellees

On Appeal from the County Court at Law
No. 1, Dallas County, Texas

Trial Court Cause No. CC-15-06413-A.

Opinion delivered by Justice Stoddart.

Justices Bridges and Fillmore participating.

In accordance with this Court's opinion of this date, the trial court's order of dismissal is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 7th day of September, 2017.