COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 2-01-219-CV

EVANNA L. JOHNSON-SNODGRASS — APPELLANT

V.

KTAO, INC. AND KTAO PARTNERS, LTD. D/B/A ARLINGTON OAKS OFFICE PARK — APPELLEES

FROM THE COUNTY COURT AT LAW NO. 2 OF TARRANT COUNTY

OPINION ON REHEARING

Appellees filed a motion for en banc rehearing arguing that our opinion conflicts with this court's previous opinions in *Maida v. Fire Insurance Exchange*, 990 S.W.2d 836 (Tex. App.—Fort Worth, 1999, no pet.) and *Montgomery Ward & Co., Inc. v. Denton County Appraisal District*, 13 S.W.3d 828 (Tex. App.—Fort Worth 2000, pet. denied). Appellees contend that our holding in *Maida* and in the present opinion are in conflict because, according to appellees:

> In *Maida*, the same notice from the same court as at issue was argued to support dismissal on only two bases: the court's inherent authority; or the appellant's failure to seek the required affirmative relief. This Court rejected that analysis, and concluded that the notice did not restrict the trial court at all in its grounds for dismissal. . . . The Court went on to find that dismissal was proper under the trial court's inherent authority, pursuant to this same notice. (citation omitted)

In *Maida*, we did not hold that dismissal was proper under the trial court's inherent authority. To the contrary, we held: "we hold that the court abused its discretion in dismissing the case under its inherent authority, [and that] it was also an abuse to fail to reinstate a case improperly dismissed." 990 S.W.2d at 842. Moreover, in *Maida*, the dismissal order was "silent as to the reason for dismissal." *Id.* at 840. Thus, in *Maida*, we were required to "affirm on any legal theory supported by the record." *Id.* at 839-40.

Here, the trial court's dismissal order specifically referenced rule 165a as the basis for dismissal of Snodgrass's case. Thus, unlike in *Maida*, where we were required to affirm on any legal theory supported by the record, here, we were required only to determine whether the trial court abused its discretion in dismissing Snodgrass's case pursuant to rule 165a. We cannot agree with appellees' contention that our opinion conflicts in any way with our *Maida* opinion.

In *Montgomery Ward*, the appellant contended that he "was denied due process of law when the court dismissed the case without sending Appellant

notice that the case was about to be dismissed for want of prosecution." 13 S.W.3d at 829. We held: "[b]ecause Appellant had notice of the court's order dismissing its case within the time allowed by Rule 165a.3, to file a verified motion to reinstate its case, Appellant was not denied due process of law." *Id.* at 831. Hence, *Montgomery Ward* did not involve the issue of the adequacy of the notice of the basis for dismissal.

Here, however, Snodgrass's complaint on appeal was that the trial court abused its discretion in dismissing her case for want of prosecution under its inherent authority, if it did, because she was not given notice that her case was subject to dismissal under the trial court's inherent authority. Based on controlling supreme court case law, *Villarreal*, we agreed. *Villarreal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex. 1999). Our opinion therefore does not conflict in any way with our *Montgomery Ward* opinion.[1]

SUE WALKER
JUSTICE

PANEL A: HOLMAN and WALKER, JJ.; and DAVID L. RICHARDS, J. (Sitting by Assignment).

PUBLISH
[Delivered May 9, 2002]

[1]On this date, the en banc court in a separate order denied appellees' motion for en banc rehearing.