

Supreme Court of Florida

No. 70,187

JOSEPH MASON, Petitioner,

vs.

GEORGE BOYUNG, ET AL., Respondents.

[January 14, 1988]

BARCKETT, J.

We accepted jurisdiction in order to review the conflicting decisions of Mason v. Boyung, 502 So.2d 27 (Fla. 2d DCA 1987), and Gant v. Tallahassee Memorial Regional Medical Center, 490 So.2d 1020 (Fla. 1st DCA 1986), quashed sub nom. Barnett Bank of East Polk County v. Fleming, 508 So.2d 718 (Fla. 1987). The issue to be resolved was whether a prematurely filed motion to dismiss for failure to prosecute under Florida Rule of Civil Procedure 1.420(e) constitutes "record activity" sufficient to bar dismissal of the action. However, we have recently answered this question in the negative in Barnett Bank.

Accordingly, the decision of the Second District is approved.

It is so ordered.

McDONALD, C.J., and OVERTON, EHRLICH, SHAW, GRIMES and KOGAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court
of Appeal - Direct Conflict of Decisions

Second District - Case No. 86-1295

J. Stanford Lifsey, Tampa, Florida,
for Petitioner

Peter T. Hofstra of DeLoach & Hofstra, P.A., Seminole, Florida,
for Respondents