

## ARIZONA COURT OF APPEALS AFFIRM TRIAL COURT'S DISMISSAL FOR JSH CLIENTS IN



*Lakridis v. Holly Udy-Meekin, et al.*

Arizona Court of Appeals | September 29, 2020

JSH Attorneys: [Patrick C. Gorman](#) and [Justin M. Ackerman](#)

**Case Summary:** This case arose from a February 2016 complaint filed by Lakridis alleging liability against Massachusetts Mutual Life Insurance Company ("Massachusetts Mutual"), Holly Udy-Meekin, and P.A.M., Inc. (collectively, the "Defendants"), among others, for an injury resulting from a slip-and-fall incident occurring in February 2014. Following an appeal reversing the grant of a motion to dismiss, the case was remanded back to the trial court on July 23, 2018. Following that date, Plaintiff did nothing to prosecute the case. No case management statement was filed, no discovery was requested, and no motions were filed with the Court.

On February 26, 2019, the court issued an order informing the parties it had placed the action on the dismissal calendar and that the case would be dismissed on April 22, 2019, unless the parties filed a joint report and proposed scheduling order or a motion to continue showing good cause. Plaintiff did not file anything by this deadline. Roughly a week later, on May 1, 2019, after the deadline set by the court, Lakridis's counsel moved to (1) withdraw as counsel "due to irreconcilable differences and disagreements with [Lakridis]"; and (2) continue the action on the dismissal calendar "to allow [Lakridis] sufficient time to retain new counsel. On behalf of their clients, JSH attorneys Patrick Gorman and Justin Ackerman objected to Plaintiff's request for more time to continue the case on the dismissal calendar. Plaintiff then replied, arguing for the first time that the Court should take under consideration Plaintiff's traumatic brain injury (TBI) and that it created "challenges beyond what ordinarily appear in civil cases."

The trial court denied Plaintiff's request to continue the case on the dismissal calendar and dismissed the case without prejudice. Plaintiff sought Rule 60 relief on the denial of his motion to continue or in the alternative, leave to refile the Complaint under A.R.S. § 12-504, which was also denied. Plaintiff then filed a notice of appeal to the Arizona Court of Appeals.

Plaintiff argued on appeal that the trial court erred in dismissing his case without holding a hearing, *sua sponte*, to evaluate whether Plaintiff's TBI impacted his counsel's ability to timely prosecute his case, despite Plaintiff's counsel failing to comply with the Court's February 26, 2019 order and/or Plaintiff's counsel failing to apprise the trial court prior to the April 22, 2019 deadline of any issues in communicating with his client.

Defendants argued on appeal that Plaintiff failed to timely prosecute his case for over eight months following its remand from the Arizona Court of Appeals on the first appeal in this matter. Further, Defendants argued that Plaintiff's failure to comply with the trial court's order on February 26, 2019 was dispositive of the issue and that under Rule 38.1, Ariz.R.Civ.P., the trial court was required to dismiss the case without prejudice. Furthermore, Defendants argued that the trial court did not err in holding an evidentiary hearing on Plaintiff's TBI where none was ever requested before dismissal of the case. Moreover a hearing was not necessary following dismissal given that Plaintiff had sufficient notice and opportunity to be heard prior to his case being dismissed. Finally, given the lack of diligence, Defendants argued that the trial court did not err in denying them relief to refile the complaint under A.R.S. § 12-504.

The Court of Appeals affirmed the trial court's ruling dismissing this case for Plaintiff's failure to prosecute under Rule 38.1. The Court of Appeals held there was no error in dismissing Plaintiff's case for failure to comply with the trial court's February 26, 2019 order under Rule 38.1. The Court further held that there was no requirement for the trial court to hold an evidentiary hearing, *sua sponte*, on Plaintiff's TBI without it being requested prior to dismissal. The Court noted that the dismissal under Rule 38.1 is not like a dismissal for sanctions under Rule 37, and therefore, did not require the same requisite notice and evidentiary hearing prior to dismissal without prejudice. Furthermore, the Court held that given the lack of diligence involved and the prejudice Defendant would suffer if the case was resurrected, the trial court did not err in denying relief under Rule 60 or A.R.S. § 12-504.

[Patrick Gorman](#) is a partner in the firm's Professional Liability, Bad Faith & Complex Litigation Trial Group. He represents large insurers in matters involving bad faith claims and extra-contractual liability, insurance coverage, professional liability and other general civil litigation matters.

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