

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-330

RAYMOND WILSON, THIRD

vs.

PARKING CLERK OF DARTMOUTH.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

In August of 2019, the plaintiff received a \$250 ticket for parking in a handicap zone. The ticket was upheld after a hearing conducted in the office of the parking clerk for the town of Dartmouth. The plaintiff subsequently sought review in the Superior Court pro se.¹ A judge granted the defendant's motion to dismiss the claim for lack of prosecution. We affirm.

Dismissal under Mass. R. Civ. P. 41 (b) (2), 365 Mass. 803 (1974), for failure to prosecute is "committed to the sound discretion of the trial judge and can be reversed only in the rare instance that it is so arbitrary, capricious, whimsical, or idiosyncratic that it constitutes an abuse of discretion

¹ Among other things, he claimed that the decision was unsupported by the evidence, based on an unlawful procedure, and arbitrary and capricious.

amounting to an error of law." Dewing v. J.B. Driscoll Ins. Agency, 30 Mass. App. Ct. 467, 470 (1991). Accordingly, we review for an abuse of discretion.

Rule 41 (b) (2) states that "[o]n motion of the defendant, with notice, the court may, in its discretion, dismiss any action for failure of the plaintiff to prosecute or to comply with these rules or any order of court." In considering the circumstances under which a judge should dismiss a case for failure to prosecute, the Supreme Judicial Court has recognized that:

"[l]itigants must act with reasonable diligence to bring their litigation to a final conclusion. Because of the volume of litigation pending before all levels of the judicial branch, it is essential that it devote its time and efforts to those litigants who prosecute their cases with reasonable diligence, and that it deny further consideration of cases which the litigants have unreasonably failed, neglected or refused to prosecute."

Bucchiere v. New England Tel. & Tel. Co., 396 Mass. 639, 642 (1986), quoting State Realty Co. of Boston, Inc. v. MacNeil Bros. Co., 358 Mass. 374, 379 (1970).

Here, the plaintiff failed to comply with Superior Court Standing Order 1-96 governing judicial review of agency proceedings, which required him to serve the defendant with a motion for judgment on the pleadings thirty days after service of the administrative record. On July 30, 2020, two weeks after the plaintiff's motion was due to be served, the defendant

notified the plaintiff that it would file a motion to dismiss the complaint for failure to prosecute if the motion were not served by August 7, 2020. The plaintiff ignored this warning and instead of responding to the defendant's motion to dismiss by filing the requisite motion for judgment on the pleadings, the plaintiff filed several oppositions, claiming that he never received a copy of the administrative record.²

After reviewing the record, we agree with the Superior Court judge that the plaintiff exhibited "a pattern of delay" throughout the case. And aside from a number of unsupported assertions in his brief that the judge was biased against him, the plaintiff has failed to show how the judge abused her discretion by dismissing the case as a result.³ Instead, we think the judge properly recognized that the right of self-representation is not a license to evade the rules of procedure. See International Fid. Ins. Co. v. Wilson, 387 Mass. 841, 847

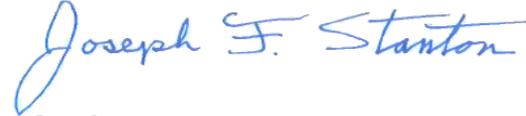
² The plaintiff renews his contention on appeal. The Superior Court judge declined to credit this allegation, however, noting that the plaintiff filed his first untimely request for the administrative hearing transcript several days after defense counsel sent the administrative record, which included a notification of the plaintiff's transcript rights. As the judge noted, this sequence of events "led[] to the reasonable inference that the plaintiff did in fact receive . . . the certified copy of the administrative record." See Adoption of Larry, 434 Mass. 456, 462 (2001) (deferring to judge's assessment of credibility).

³ We need not address the plaintiff's claims about the merits of the dispute as they are beyond the scope of our review.

(1983), quoting Faretta v. California, 422 U.S. 806, 834-835
n.46 (1975).⁴

Judgment affirmed.

By the Court (Desmond,
Ditkoff & Walsh, JJ.⁵),



Clerk

Entered: June 22, 2022.

⁴ The appellee's request for attorney's fees is denied.

⁵ The panelists are listed in order of seniority.