

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 00-CV-1237

JOHN LAWS FOSTER , APPELLANT,

v.

FERGUSON EVANS, APPELLEE.

On Appeal From the Superior Court of the
District of Columbia
Civil Division
(CA-44122-00)

(Hon. Susan R. Winfield, Trial Judge)

(Submitted September 20, 2001

Decided December 20, 2001)

Before FARRELL and RUIZ , *Associate Judges*, and NEWMAN, *Senior Judge*.

ORDER

PER CURIAM: Upon review of the briefs and the record in this appeal, the court remains uncertain as to the basis for the trial court's dismissal of the case, which operates as a final adjudication on the merits because the trial court did not specifically state that the dismissal was without prejudice. *See Johnson v. Berry*, 658 A.2d 1051, 1052 n.2 (D.C. 1995) (citing Super. Ct. Civ. R. 16-II and 41(b)). Appellant argues that the court dismissed the case because of his failure to serve process on the defendant. *See Order of the Superior Court of August 29, 2000; but see Herbin v. Hoeffel*, 727 A.2d 883, 888 (D.C. 1999). On the other hand, a docket entry indicates that the court acted because of appellant's failure to appear at a pretrial conference. *See Super. Ct. Civ. R. 16-II*. In the latter event, it is important for

this court's review to have the benefit of the trial court's reasoning in imposing the most severe sanction. *See generally Durham v. District of Columbia*, 494 A.2d 1346, 1351-52 (D.C. 1985). Accordingly, we remand the record of the case for clarification by the trial court of the basis for the dismissal order.

NEWMAN, J., concurring: In considering *Durham v. District of Columbia, id.*, the trial court should be mindful of whether any lesser sanction is available where the plaintiff is proceeding *in forma pauperis*.