IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 798

Amending Civil Rule 41(b)
regarding involuntary dismissal

IT IS ORDERED:

Civil Rule 41(b) is amended to provide:

(b) Involuntary Dismissal--Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant [HIM]. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's [HIS] evidence, the defendant, without waiving the [HIS] right to offer evidence in the event that a motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then weigh the evidence, evaluate the credibility of witnesses [DETERMINE THEM] and render judgment against the plaintiff even if the plaintiff has made out a prima facia case. Alternately, the court [OR] may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

DATED: January 14, 1987

EFFECTIVE DATE: March 15, 1987

Chief Justice Rabinowitz

Justice Burke

Justice Matthews

Justice Compton

Justice Moore

Statement of Chief Justice Rabinowitz and Justice Matthews.

Plaintiffs who present a substantial case have a right to a full trial. The present amendment will take away this right in many cases. Experimental data, though limited, suggests that decisions to dismiss upon presentation of the plaintiff's case made under a weighing standard are often changed once the fact-finder has heard the whole case. Steffen, The Prima Facie Case in Non-Jury Trials, 27 U. Chi. L. Rev. 94, 99-102 (1959). Speed is the only reason which supports the amendment. Whether the amendment will in fact save time is subject to question since a prudent plaintiff may be motivated to call numerous defense witnesses rather than rest on a prima facie case. Further, one trial may result in two appeals on the facts - one after a mid-trial dismissal and the second after presentation of the full case if the appellate court orders the trial to proceed - whereas under the current rule one trial can generate only one appeal. Because we doubt that the amendment will result in an overall saving of judicial time and we believe that it presents distinct risks of premature and inaccurate decisions, we dissent from the adoption of the amendment.

CHIEF JUSTICE RABINOWITZ

JUSTICE MATTHEWS