IN THE COURT OF APPEALS OF IOWA

No. 6-241 / 95-0731

FILED
JUN 27 1996
CLERK SUPREME COURT

MERLE POWELL,

Plaintiff-Appellant,

vs.

MIDWEST GAS COMPANY; CITY OF DES MOINES, IOWA; and BONNIE'S BARRICADES, INC.,

Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Richard G. Blane, II, Judge.

Plaintiff appeals from the district court's ruling under Iowa Rule of Civil Procedure 215.1 denying his application to set aside the dismissal of his tort action against defendants. **AFFIRMED.**

Larry L. Miller, Des Moines, for appellant.

Emily Gould Chafa, Des Moines, for appellee city.

Scott Duncan and Gregory R. Brown of Duncan, Green, Brown, Langeness & Eckley, Des Moines, for appellee Midwest Gas

R. Mark Cory and David H. Luginbill of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, for appellee Bonnie's Barricades.

Heard by Sackett, C.J., and Habhab and Streit, JJ.

PER CURIAM.

The question in this appeal is whether the trial court properly denied plaintiff's application to set aside a dismissal under Iowa Rule of Civil Procedure 215.5 filed more than thirty days following the dismissal. We affirm.

Plaintiff's case was dismissed December 30, 1994. He stated the dismissal should be set aside because: (1) a scheduling conference was not held; (2) the matter had not been set for trial; and (3) the dismissal was the result of oversight. In a reply to resistance, plaintiff also contends a failure of communication between his attorneys and a medical problem were further reasons the dismissal should be set aside.

In denying the application, the district court found the notice of dismissal was timely served and received by both of plaintiff's attorneys and plaintiff did not seek relief prior to the dismissal. The trial court found there had been little activity on the file and plaintiff failed to provide information needed to answer interrogatories. The court ruled plaintiff failed to show any reason for setting aside a Rule 215.1 dismissal and denied plaintiff's application.

On appeal, plaintiff contends his application should not have been denied.

In our review, we consider only those facts properly in the record. *State ex rel. Iowa Dept. of Human Services v. Duckert*, 465 N.W.2d 871, 875 (Iowa 1991).

The trial court's findings of fact and inferences therein with regard to an involuntary dismissal under Rule 215.1 are binding on the court if supported by substantial evidence. *Rath v. Sholty*, 199 N.W.2d 333, 336 (Iowa 1972); *Wharff v.*

Iowa Methodist Hospital, 219 N.W.2d 18, 21 (Iowa 1974). Whether the facts and inferences constitute "inadvertence", "mistake", or "other reasonable cause" is not a factual, but a legal question on review. *Rath*, 199 N.W.2d at 336; *Wharff*, 219 N.W.2d at 21. The review of a trial court's ruling is for an abuse of discretion, which abuse will be found only where there is no support for the decision in the hearing evidence. *Rath*, 199 N.W.2d at 336.

The trial court's findings are factually supported. We affirm.

AFFIRMED.