IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

STEVE C. SHEEDER,	)	
Plaintiff-Appellee,	)	Filed February 26, 1985
vs.	)	
STEW HANSEN'S DODGE CITY, INC., and CHRYSLER CORPORATION,	)	4-503 83-1263
Defendants-Appellants.	)	

Appeal from the Iowa District Court for Guthrie County - James W. Brown, Judge.

Defendants brought an interlocutory appeal challenging a trial court order that reinstated this action after it had been dismissed. AFFIRMED.

Donald Hohnbaum and Alan Pape of Christianson, Hohnbaum & George, Des Moines, Iowa, for defendant-appellant Stew Hansen.

Mark J. Wiedenfeld of Grefe & Sidney, Des Moines, Iowa, for defendant-appellant Chrysler Corporation.

James B. Smith of Shirley, Smith, Shirley & Powell, Perry, Iowa, for plaintiff-appellee.

Considered by Schlegel, P.J., Hayden, and Sackett, JJ.

Defendants, Stew Hansen's Dodge City, Inc., and Chrysler Corporation, brought an interlocutory appeal challenging a trial court order that reinstated this action after it had been dismissed. We affirm the trial court.

I. Background. This action began on June 23, 1981, when Steve Sheeder, plaintiff in this case, filed a cross-petition against defendants, attempting to join them as parties to an action in which Sheeder was a defendant. On August 6, 1981, after motions and a hearing, the district court entered an order requiring the clerk to set up Sheeder's cross-petition in a separate file. A new file was opened, and the action was assigned docket number 18196.

On July 2, 1982, the clerk mailed a "try or dismiss notice" pursuant to rule 215.1 of the Iowa Rules of Civil Procedure. The notice contained the docket number of this action and the docket number of the action in which Sheeder was the defendant. Captions for both actions were on the notice. The body of the notice, however, specifically referred to the June 23 filing date of this action. The only counsel listed in the notice was James B. Smith, counsel for Sheeder.

On October 11, 1982, Sheeder filed a certificate of readiness for trial. Trial was subsequently scheduled for December 7, 1982. On December 7, 1982, the trial was reassigned to January 21, 1983 by the court administrator. The case was rescheduled because other cases on the court docket took precedence. On January 14, 1983, the court administrator rescheduled the trial for March 21, 1983, again because other cases on the court docket took precedence.

Sheeder was ready and willing to try the case on March 21. However, defendant Stew Hansen's Dodge City moved for a continuance due to the expected absence of a witness. Even though Sheeder resisted the motion, the trial court granted a continuance. The trial was rescheduled for May 24, 1983. Because other cases on the docket took precedence, the court administrator rescheduled the trial for August 29, 1983.

On July 12, 1983, Chrysler moved for entry of dismissal on the grounds that Sheeder had failed to compy with rule 215.1. On August 1, 1983, the trial court ruled that because Sheeder had not tried the case before January 1, 1983, or filed a motion for continuance, the case had been automatically dismissed on January 1, 1983, by operation of rule 215.1. See Baty v. City of West Des Moines, 259 Iowa 1017, 1023, 147 N.W.2d 204, 208 (1966) (dismissal automatic without formal action by either court or clerk).

Because the six-month time period for reinstatement of the action under rule 215.1 had passed, Sheeder had no apparent means of relief, even though he had been willing to go to trial since October 1982, and the delay of trial was due to the actions of the court administrator and defendant Stew Hansen's Dodge City.

On August 17, 1983, Sheeder filed a "motion to reconsider." After a hearing the trial court decided to reinstate the case. Defendants have brought this interlocutory appeal challenging the reinstatement.

II. Rule 215.1. Before going to the merits of this appeal, we should review the purpose of rule 215.1. In Greene v. Tri-County Community School District, 315 N.W.2d 779 (1982), the Iowa Supreme Court discussed dismissal under rule 215.1. The court stated:

> It is in the public interest that cases not tried or settled within a reasonable time should be dismissed. Whatever hardship might be suffered by an occasional litigant whose suit is thus lost is more than compensated by the general good that results from the impetus provided by the rule.

Id. at 781.

However, passage of time alone does not create a public interest in dismissing cases. "Rule 215.1 is designed, worded and interpreted to discourage dilatory tactics." Kutrules v. Suchomel, 258 Iowa 1206, 1212, 141 N.W.2d 593, 597 (1966) (emphasis added). See also Baty v. City of West Des Moines, 259 Iowa at 1022-23, 147 N.W.2d at 208 (1966) (purpose and object of rule "to discourage dilatory tactics and require 'reasonable diligence' to see that court actions are

brought to trial promptly . . ."). Thus, the rule allows the district court to order a case continued in certain circumstances. Iowa R. Civ. P. 215.1. In determining whether to grant continuances, "[t]rial courts face the unenviable burden of balancing the need to clear up their backlog with granting continuances when justice and equity so demand." Department of General Services v. R. M. Boggs Co., 336 N.W.2d 408, 410 (Iowa 1983). "Rule 215.1 was intended to be a shield, not a sword. It was not designed as a technicality to trap a diligent party and prevent him from having a day in court." Baty, 259 Iowa at 1026, 147 N.W.2d at 210, quoted in Glenn v. Farmland Foods, Inc., 344 N.W.2d 240, 243 (Iowa 1984).

III. Reinstatement of Sheeder's Action. The trial court relied on alternative grounds to reinstate Sheeder's action. It ruled that the orders of the court administrator, continuing and reassigning the case, substantially complied with the rule 215.1 provisions for continuance. The trial court also ruled that the "try or dismiss" notice was defective, and that rule 215.1 therefore did not apply to this case.

A. Court Administrator's Actions. In holding that the actions of the court administrator were sufficient to continue the case under rule 215.1, the trial court reasoned that the "Fifth Judicial District Rules of Practice 14(c) authorize the administrator to assign cases for trial," and that "the administrator's order has the effect of a district court order." The trial court also stated that finding substantial compliance with rule 215.1 under these facts was "in keeping with the spirit and intent of the rule." The trial court then quoted the following:

> We have never said that a case should be dismissed for lack of prosecution while on the active trial assignment, assigned for trial on a date certain and before the arrival of the trial date. Such a ruling would be arbitrary and beyond the realm of sound discretion.

Kutrules v. Suchomel, 258 Iowa at 1213, 141 N.W.2d at 598.

We believe the trial court erred in finding that reassignment by the court adminsitrator substantially complied with rule 215.1 and continued the case. Rule

215.1 provides that continuances may be granted upon "application and ruling thereon after notice and not ex parte." Iowa R. Civ. P. 215.1. Reassignment by the court administrator was not the result of an application and ruling thereon. No notice to contest the reassignment was given to the parties. We therefore must conclude that the court administrator's actions did not comply with rule 215.1. Further, we doubt that the court administrator has any authority to continue a case, even if rule 215.1 is otherwise complied with. The Iowa Supreme Court stated in dicta in a recent case that "[a] ruling on a motion to continue is beyond the authority of a court administrator as it is a judicial act which must be performed by a judge." Department of General Services v. R. M. Boggs Co., 336 N.W.2d 408, 411 (Iowa 1983).

We believe, however, that the exception to automatic dismissal announced in Kutrules, 258 Iowa at 1213-14, 141 N.W.2d at 598, should apply in this case. For the Kutrules exception to apply, the case must have been assigned for trial on a date that precedes the "try or dismiss" deadline, delay in trying the case must be due to a crowded docket, and the plaintiff has the burden to show action to retain jurisdiction and immediate trial status was pursued. See Baty v. City of West Des Moines, 259 Iowa at 1025, 147 N.W.2d at 210. This case was scheduled to be tried before the "try or dismiss" deadline. The rescheduling in this case was due to a crowded docket. Sheeder's action in opposing the continuance requested by Stew Hansen's Dodge City shows Sheeder was trying to preserve immediate trial status. While Sheeder's counsel, in an abundance of caution, might have applied for a continuance before January 1, 1983, his failure to do so does not prevent the application of this exception to automatic dismissal. See Kutrules, 258 Iowa at 1214, 141 N.W.2d at 598.

We believe that Sheeder has used "reasonable diligence" to see that this action was brought to trial promptly. See Baty, 259 Iowa at 1023-24, 147 N.W.2d at 208. Defendants in this case should not be allowed to use rule 215.1 as a sword.

See Glenn v. Farmland Foods, 344 N.W.2d 240, 243. Sheeder's action was not automatically dismissed, and the trial court acted properly in reinstating the case after it had been dismissed by written order.

B. Defective Notice. The trial court also ruled that the "try or dismiss" notice sent by the clerk of court was defective. The trial court found the notice defective because it failed to list all counsel appearing as required by rule 215.1(c). Defendants claim that ruling was erroneous.

Sending a defective "try or dismiss" notice voids the operation of rule 215.1. See Greene v. Tri-County Community School District, 315 N.W.2d at 782. In determining whether a notice is defective, courts must decide whether the notice substantially complied with the rule. See id. Hence, the question presented by this appeal is whether a "try or dismiss" notice that lists only plaintiff's counsel substantially complies with rule 215.1.

Greene is the only case that addresses what constitutes substantial compliance with rule 215.1. In Greene, the court held that a "try or dismiss" notice which was sent one day late was defective. See id. That holding regarding timeliness is of little help in resolving the question presented here.

Rather than ruling on the question of defective notice when we have scant precedent to guide us, we will rely on our decision in division III-A as properly disposing of this appeal. That decision would be the same whether or not the "try or dismiss" notice was defective and inoperative. We therefore affirm the trial court's ruling reinstating Sheeder's action.

AFFIRMED.