FILED
DEC 18 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

81

FARMERS COOP ELEVATOR CO., (of Iowa Falls),

Plaintiff-Appellant,

vs

BYRON J CLARK and LORAINE C. CLARK,

Defendants-Appellees.

Filed December 18, 1985

5-535
85-162

Appeal from the Iowa District Court for Hardin County - Carl Baker, Judge

Plaintiff appeals the trial court's denial of his application for continuance.

AFFIRMED.

John C. Sorensen of Boyle, Schuler, Stanton, Grabinski & Sorensen, Clear Lake, Iowa, for plaintiff-appellant.

John P. Whitesell and Thomas C. Whitesell of Whitesell, Deats & Whitesell, Iowa Falls, Iowa, for defendants-appellees.

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

HAYDEN, J.

Plaintiff appeals the trial court's denial of his application for continuance. It is claimed 1) that the trial court abused its discretion in denying the application, and 2) that the case was not properly dismissed since the clerk failed to issue a second try-or-dismiss notice. We affirm.

The plaintiff, Farmers Coop Elevator Co., filed a mechanic's lien foreclosure action in January 1982. In August 1983 the parties were timely given a try-or-dismiss notice pursuant to Iowa Rule of Civil Procedure 215.1. On December 18, 1983, an application for continuance was filed and approved by the trial court. The court's order provided that the case would be continued until January 1, 1985.

With the exception of the filing of discovery depositions by the plaintiff and supplemental answers to interrogatories by the defendant, there was no further activity in this case. In November 1984, plaintiff filed another application for continuance stating that, notwithstanding good faith effort by counsel, the matter would not be submitted prior to January 1, 1985. After an unreported hearing, the trial court denied the application. Plaintiff has appealed.

The matter of a continuance is within the sound discretion of the trial court. Crouch v. Randolph, 213 N.W.2d 673, 678 (Iowa 1973). Absent a showing "that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable," this court will not interfere. State v. Morrison, 323 N.W.2d 254, 256 (Iowa 1982).

In the present case, we cannot say that the court abused its discretion in denying the continuance. The purpose of rule 215.1 is "to clear the docket of dead cases and to assure timely and diligent prosecution of those cases which should be brought to a conclusion." Glenn v. Farmland Foods, Inc., 344 N.W.2d 240, 243 (Iowa 1984) (quoting Brown v. Iowa District Court, 272 N.W.2d 457,

458 (Iowa 1978)). Certainly it was within this purpose to dismiss a case in which so little activity has taken place.

The plaintiff argues, however, that the dismissal was inappropriate since the clerk failed to give a second try-or-dismiss notice. We note that this contention was never raised by a motion for reinstatement to the trial court. Questions not presented to the trial court cannot be raised or reviewed on appeal. Still v Careage Corp., 353 N.W.2d 416, 420 (Iowa 1984). Even so, we would conclude that a second notice is unnecessary. As the supreme court indicated in Rhiner v Arends, 292 N.W.2d 399, 401 (Iowa 1980), "[a] second try-or-dismiss notice would impart no warning not already conveyed by the first."

Finding no error, we affirm the dismissal.

AFFIRMED.