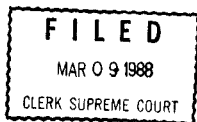


IN THE COURT OF APPEALS OF IOWA



JOSEPH D. CARNEY, JR., a)
minor, and by his mother)
and next friend, JUDY CARNEY,)

Plaintiffs-Appellants,)

vs)

THOMAS BERGSTROM, M.D.)
AND KYLAND SCHMIDT, P.A.C.)
and BARBARA MUIR, P.A.C.)

Defendants-Appellees.)

Filed March 9, 1988

7-567
87-608

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Appeal from the Iowa District Court for Madison County (No. 22611) -
James W. Brown, Judge.

Plaintiff appeals from the district court's refusal to reinstate plaintiff's
medical malpractice action which had been dismissed for want of prosecution
pursuant to Iowa Rule of Civil Procedure 215.1. **AFFIRMED.**

Melio A. Tonini, Des Moines, for the plaintiff-appellant.

Steven K. Scharnberg and Hugh J. Cain, of Duncan, Jones, Riley & Finley,
P C , Des Moines, for the defendants-appellees.

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

SACKETT, J.

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Plaintiff appeals from the district court's refusal to reinstate plaintiff's medical malpractice action, which had been dismissed for want of prosecution pursuant to Iowa Rule of Civil Procedure 215.1. We affirm.

This medical malpractice action was filed on March 7, 1985. Plaintiff filed a reply to defendants' affirmative defense on March 27, 1985. Plaintiff took no further action and the case was dismissed for want of prosecution on January 1, 1987.

Our scope of review is at law and the district court's findings of fact are binding upon us if supported by substantial evidence. O'Brien v. Mullapudi, 405 N.W.2d 815, 817 (Iowa 1987). Rule 215.1 provides two avenues by which to reinstate a case dismissed under that rule:

The trial court may, in its discretion, and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, reinstate the action or actions so dismissed.

Plaintiff argues the trial court erred in failing to grant a mandatory reinstatement based on plaintiff's alleged showing of oversight. The attorney's reason for failing to request a continuance was that the rule 215.1 notice was dislodged from its folder and misplaced. He stated he assumed his staff or associate had obtained a continuance prior to the dismissal.

The trial court accepted plaintiff's explanation of the handling of the rule 215.1 notice, but went on to rule that plaintiff

failed to establish the dismissal was the result of oversight, mistake or other reasonable cause as those terms are used in rule 215.1. An important factor in reaching this conclusion is the amount of time which elapsed—approximately twenty-two months—without any apparent activity by plaintiff to advance the case for trial.

Plaintiff argues on appeal the trial court erred in considering plaintiff's inactivity. Plaintiff contends once the trial court "accepted" the explanation

why the attorney mistakenly failed to request a continuance, the trial court was required to grant mandatory reinstatement under rule 215.1.

Plaintiff's argument is without merit. The Iowa Supreme Court has plainly stated that a prerequisite to mandatory reinstatement under rule 215.1 is a showing by plaintiff of reasonable diligence in preparing and pursuing the case for trial. O'Brien, 905 N.W.2d at 817; Sladek v. G & M Midwest Floor Cleaning, Inc., 403 N.W.2d 774, 777 (Iowa 1987); Wharff v. Iowa Methodist Hosp., 219 N.W.2d 18, 22-23 (Iowa 1974). In effect, plaintiff must show he would have been entitled to a continuance, if one had timely been requested, in order to prevail on his motion to reinstate a case dismissed under rule 215.1. O'Brien, 405 N.W.2d at 819.

The evidence supports the trial court's finding that plaintiff failed to show diligence in preparing the case for trial. We hold the trial court did not err in considering plaintiff's inactivity and failure to move the case toward trial in denying plaintiff's request for mandatory reinstatement.

We further conclude the district court did not abuse its discretion in denying discretionary reinstatement. Viewing plaintiff's total inactivity for nearly two years in light of rule 215.1's purpose "to clear the docket of dead cases and to assure the 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) (citation omitted), we cannot say the trial court's denial of reinstatement fell without the broad abuse of discretion standard.

We affirm the trial court's ruling and order dismissing the case.

AFFIRMED.