FILED
FEB 2 2 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-653 / 89-224

IRVIN FRANK BENNING,

Plaintiff-Appellant,

14

vs.

HOWARD FLOOK and MABEL FLOOK,

Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Jack Levin, Judge.

Plaintiff appeals the district court's refusal to set aside an order of dismissal. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for appellant.

Gregory W. Peterson of Watson & Peterson, P.C., Des Moines, for appellees.

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

SACKETT, J.

15

Plaintiff-appellant Irvin Benning appeals the district court's refusal to set aside an order of dismissal. Plaintiff at one time leased an apartment owned by defendants-appellees Howard and Mable Flook. He filed this action against the defendants, alleging they had unlawfully excluded him from the leased premises because he had complained to the city about conditions in the apartment. He also alleged unlawful withholding of his damage deposit.

Plaintiff failed to appear on the date set for trial, and the district court dismissed his petition. Plaintiff then filed a motion to set aside the order of dismissal. In his motion, plaintiff noted that his former attorney's license to practice law was suspended twenty-eight days before the trial date. Plaintiff alleged that an associate of his former attorney undertook to assume plaintiff's case but failed to notify plaintiff of the trial date. The substituted attorney stated he had in fact notified plaintiff of the trial date.

The district court denied plaintiff's motion to set aside the order of dismissal. Plaintiff appealed, contending the district court made an error of law in doing so. Our review of the case is on assigned errors. Iowa R. App. P. 4. We affirm the district court's decision.

There was only one issue of fact before the trial court when it was asked to rule on the motion to set aside its previous order: Did the plaintiff have notice of the original trial date? As the attorneys and the defendants waited for the plaintiff to appear on the day of the trial, the plaintiff's attorney stated to the trial court that he had spoken with the plaintiff within the past week and had reminded him of the forthcoming trial. He also said that the plaintiff seemed to be aware of the trial date when he was told.

In his motion to set aside the order, plaintiff alleged he was unaware of the exact date and time of the trial. He claimed he had not been told by the attorney who appeared for him at the trial. The trial court found the plaintiff was aware of the trial date. We find there is substantial evidence to support this conclusion. Iowa R. App. P. 14(f)(1). We see no reason to disturb the district court's ruling.

The decision of the district court is affirmed.

AFFIRMED.