IN THE COURT OF APPEALS OF IOWA

FILED
DEC 17 1987
CLERK SUPREME COURT

CIRCLE LAKE DISTRIBUTING CORP., et al,)

Plaintiffs -Appellants,)

vs.)

CITY OF MASON CITY, IOWA, and)
CERRO GORDO COUNTY, IOWA, et al,)

Defendants-Appellees.)

Filed December 17, 1987

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Appeal from the Iowa District Court for Cerro Gordo County (Nos. 48656, 48657, 48694, and 48717) - Jon Stuart Scoles, Judge.

Plaintiffs appeal from a trial court ruling denying their motions for continuance to avoid dismissal under Iowa Rule of Civil Procedure 215.1 **AFFIRMED.**

William J. Lillis and Douglas A. Fulton, of Connolly, O'Malley, Lillis, Hansen & Olson, Des Moines, for the plaintiffs-appellants.

Herman P. Folkers, City Attorney, Mason City, Iowa, for defendant-appellee.

Susan Currie, Assistant County Attorney, for defendant-appellee Cerro Gordo County, Iowa.

Considered by Oxberger, C.J., and Hayden, and Sackett, JJ.

SACKETT, J.

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Plaintiffs appeal from a trial court ruling denying their motions for continuance to avoid dismissal. Iowa R. Civ. P. 215.1.

This case arises out of four actions contesting compensation awarded following condemnation of certain property in Mason City. The plaintiffs filed their petitions in September and October of 1984. In one action, plaintiffs filed a request for production on October 31, 1984, to which defendants responded on December 10, 1984. No other activity occurred in the four actions. Plaintiffs did not file a trial certificate. See Iowa R. Civ. P. 181. On August 8, 1986, the clerk of court gave notice to counsel the four cases would be subject to dismissal if not tried prior to January 1, 1987. Iowa R. Civ. P. 215.1.

On November 24, 1986, plaintiffs filed motions for continuance of the four causes. Plaintiffs stated there were no trial dates available before January 1, 1987. Plaintiffs also argued their motions for continuance should be granted because one of their expert witnesses had been injured in an automobile accident several months earlier.

The trial court overruled the motions for continuance on December 16, 1986. The trial court ordered the four actions to be dismissed on December 31, 1986, pursuant to rule 215.1. We affirm the trial court's ruling and order.

The automatic dismissal pursuant to rule 215.1 is not discretionary with the trial court, but the court does have discretion to grant continuances for just cause upon timely application. Lundy, Butler & Lundy v. Bierman, 398 N.W.2d 212, 214 (Iowa App. 1986). Absent a showing the trial court's discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable, we will not interfere. Id.

A person seeking a continuance to avoid a rule 215.1 dismissal must either prove one of the five exceptional circumstances listed in the rule, none of which apply here, or must prove the case has not been processed to final disposition notwithstanding "the exercise of reasonable diligence." Sladek v. G & M Midwest Floor Cleaning, Inc., 403 N.W.2d 774, 778 (Iowa 1987). Viewing plaintiffs' 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," see Glenn v. Farmland Foods, Inc., 344 N.W.2d 240, 243 (Iowa 1984) (citation omitted), we cannot say the trial court's denial of a continuance fell without the broad abuse of discretion standard.

Plaintiffs' argument they were entitled to a continuance under rule 183 is without merit. Without deciding whether rule 183 applies, see Crouch v. Randolph, 213 N.W.2d 673, 678 (Iowa 1973), we find plaintiffs did not support their motions for continuance as required by rule 183(b).

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

AFFIRMED.