



IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

LOUIS GREIF,)

Plaintiff-Appellant,)

vs.)

K-MART CORPORATION,)

Defendant-Appellee.)

Filed November 26, 1986

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6-281
86-131

Appeal from the Iowa District Court for Des Moines County (No. CL1348-0982) - R. David Fahey, Judge.

Plaintiff appeals the dismissal of his negligence action pursuant to Iowa R. Civ. P. 215.1, asserting that the case should not have been dismissed by operation of law or, alternatively, that it should have been reinstated and/or continued.

REVERSED AND REMANDED.

D. Raymond Walton of Aspelmeier, Fisch, Power, Warner & Engberg, Burlington, Iowa, for plaintiff-appellant.

Vicki L. Seeck of Betty, Neuman, McMahon, Hellstrom & Bittner, Davenport, Iowa, for defendant-appellee.

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

SCHLEGEL, J.

Plaintiff appeals the dismissal of his negligence action pursuant to Iowa Rule of Civil Procedure 215.1, asserting that the case should not have been dismissed by operation of law or, alternatively, that it should have been reinstated and/or continued. We reverse and remand for a trial on the merits.

The present case arises out of an accident which occurred in January 1982 when the plaintiff, Louis Greif, slipped and fell while delivering goods for his employer to the rear of defendant K-Mart's building in Burlington, Iowa. Plaintiff commenced his negligence action on September 20, 1982. On June 5, 1984, plaintiff filed a certificate of readiness. On July 11, 1984, the Des Moines County Clerk issued a notice in accordance with Iowa Rule of Civil Procedure 215.1 which indicated that the case would be dismissed if not tried before January 1, 1985.

On October 23, 1984, the court administrator issued a notice of trial setting the matter for a jury trial on February 26, 1985; the case was set as a backup on that date. A week later, the court administrator issued another notice re-scheduling the case to March 12, 1985. On November 5, 1984, the plaintiff filed a motion to continue. The court granted the motion and the case was continued until March 12, 1985.

The plaintiff's case, however, was not heard on March 12, 1985, due to another trial scheduled for that day. Approximately six months later, the plaintiff contacted the court administrator to inquire about rescheduling the case. The court administrator rescheduled the case for December 3, 1985. A week before that scheduled date, the trial court contacted the parties' counsel, informing them that it considered plaintiff's case to be dismissed as of March 12, 1985, and that it was removing the case from the assignment docket.

On December 2, 1985, the plaintiff filed a motion to reconsider or, in the alternative, to reinstate. On December 4, 1985, the plaintiff filed a motion to continue pursuant to Rule 215.1. Both motions were overruled by the trial court. Plaintiff has appealed that ruling.

Our scope of review is limited to the correction of errors at law. Iowa R. App. P. 4. The district court's findings of fact are binding upon us if supported by substantial evidence.

Iowa Rule of Civil Procedure 215.1 provides in pertinent part:

It is the declared policy that in the exercise of reasonable diligence every civil and special action, except under unusual circumstances, shall be brought to issue and tried within one year from the date it is filed and docketed and in most instances within a shorter time.

All cases at law or in equity where the petition has been filed more than one year prior to July 15 of any year shall be for trial at any time prior to January 1 of the next succeeding year. The clerk shall prior to August 15 of each year give notice to counsel of record... and the notice shall state that such case will be for trial and subject to dismissal if not tried prior to January 1 of the next succeeding year pursuant to this rule. All such cases shall be assigned and tried or dismissed without prejudice at plaintiff's costs unless satisfactory reasons for want of prosecution or grounds for continuance be shown by application and ruling thereon after notice and not ex parte. The case shall not be dismissed if there is a timely showing that the original notice and petition have not been served and that the party resisting dismissal has used due diligence in attempting to cause process to be served.

No continuance under this rule shall be by stipulation of parties alone but must be by order of court. Where appropriate the order of continuance shall be to a date certain.

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. Application for such reinstatement, setting forth the grounds therefor, shall be filed within six months from the date of dismissal.

The purpose of rule 215.1 is 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. Miller v. Bonar, 337 N.W.2d 523, 526 (Iowa 1983); Brown v. Iowa District Court for Polk County, 272 N.W.2d 457, 458 (Iowa 1978).

Several general principles have evolved from our court's previous decisions interpreting rule 215.1. One is that once a rule 215.1 notice has been given, a case may not be continued without an order of court and notice. Brown, 272 N.W.2d at 458; Kutrules v. Suchomel, 258 Iowa 1206, 1212-13, 141 N.W.2d 593, 597 (1966). When a continuance is granted, it is not removed from the operation of the rule except that the trial date is changed; in all other respects the rule remains operative. Brown, 272 N.W.2d at 458. If the order continuing the case is not complied with, the case will be dismissed. Id. When the date set for dismissal arrives, the case is automatically dismissed without formal action either by the court or the clerk. Id., Werkmeister v. Kroneberger, 262 N.W.2d 295, 296 (Iowa 1978). Once the case has been dismissed, it can only be reinstated by timely application and order. Koss v. City of Cedar Rapids, 300 N.W.2d 153, 157 (Iowa 1981). Even if good cause is shown for reinstatement, unless the application for reinstatement is filed within six months of the dismissal, the court will be without jurisdiction to reinstate. Id.

An exception to these general principles was carved out in Kutrules v. Suchomel, 258 Iowa 1206, 141 N.W.2d 593 (1966). In Kutrules, the clerk of the district court had sent notice to the plaintiff that due to the fact that plaintiff's case was over a year old it would be dismissed if not tried by the court's next term. 258 Iowa at 1409, 141 N.W.2d at 595. The plaintiff filed a certificate of readiness and a motion to withdraw his case from the dismissal list, which was granted by the district court. Id. The case was continued to the court's next term, and plaintiff filed another certificate of readiness. Id. Through

no fault of the plaintiff, the case was never heard, but was reassigned a trial date. Id. at 1210, 141 N.W.2d at 596. That same day, the defendant filed a motion to dismiss, which was granted. Id. In holding that the district court erred in dismissing plaintiff's suit, the Iowa Supreme Court held that "[w]e have never said that a case should be dismissed for lack of prosecution while on the active trial assignment, assigned for trial on a certain date and before the arrival of the trial date." Id. at 1213, 141 N.W.2d at 598. In Baty v. City of West Des Moines, 259 Iowa 1017, 1024, 147 N.W.2d 204, 209 (1966), the court stated that the Kutrules exception "did no more than recognize that there might be situations where, through no fault of plaintiff, the cause cannot be tried before the term ends to which it was specifically assigned"

We believe that we should here take notice that the court administrator in our district courts performs many of the functions that our judges used to perform. In State v. Thomas, 222 N.W.2d 488, 492 (Iowa 1974), the supreme court wrote:

Courts properly take notice of the public and private official acts of judicial departments of the state, and may take judicial notice of the ordinary course of business in an office of the court. . . . The court has judicial knowledge of its own administrative structure.

In Gold Crown Properties v. Iowa District Court, 375 N.W.2d 692, 696 (Iowa 1985), the supreme court wrote:

Even if we were to ignore the knowledge of modern district court structure and procedures that this court must possess in order to fulfill its constitutional mandate to exercise administrative control over Iowa's courts, it's clear under this record that in the fourth judicial district the duty to coordinate the trial docket and schedule cases for trial has been delegated to the court administrator.

It is true that Iowa Rule of Civil Procedure 215.1 requires that a continuance may only be made by an order of the court. It is true that the court administrator has no authority to grant a continuance. However, we would be failing our

judicial mandate if we did not recognize the extent of the administrative duties currently carried out by the court administrators. We must then necessarily determine what are the consequences of this shift of the administrative power, for it would not be prudent to recognize change and then refuse to acknowledge the consequences of change. We believe that the result of these administrators acting as the "right-hand persons" of judges is that attorneys now place much more reliance on the administrative acts of these persons. One of the important administrative functions that court administrators now perform is the reassignment of cases to another trial date, even if that case is subject to 215.1. Our supreme court has approved of that function. Gold Crown Properties, 375 N.W.2d at 698.

We believe that along with these new administrative tasks comes certain new responsibilities. One of these responsibilities must be that when, due to court congestion, a case must be rescheduled one of two things must occur. Either an automatic continuance should be granted by the district court upon submission by the court administrator of the delayed cases; or notice should be sent to plaintiff and plaintiff's attorney informing of the delay and of the need to file for a continuance by a specified date.

We believe this approach is appropriate for the following three reasons. First, though our courts have allowed the application of 215.1 even when the results are harsh, see Brown v. Iowa District Court for Polk County, 272 N.W.2d at 458, our supreme court has emphasized that the "trial court's power should be liberally applied to set aside dismissals to allow trials on the merits" Gold Crown Properties, 375 N.W.2d at 700. The supreme court has also said in Baty v. City of West Des Moines, 147 N.W.2d at 210:

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.

Rule 215.1 includes language such as "reasonable diligence" and "except under unusual circumstances" which suggests that a policy of flexibility has been built into the rule. In Miller v. Bonar, 337 N.W.2d at 526 (Iowa 1983), the reasons for the rule were said to be clearance of the docket of dead cases and assurance the cases will be diligently prosecuted. When courts are congested, this congestion causes delay. Trials which are ready are therefore rescheduled. Then neither an automatic continuance is given or notice to the parties is issued informing them that a continuance must be obtained by a certain date. Given this situation, we do not think the policy underlying 215.1 is being held in high regard.

Secondly, we believe that the cases which have carved out exceptions to 215.1 clearly indicate that we are going to weigh the type of oversight by one of the parties against the unfairness caused by not going ahead with the trial. In Kutrules v. Suchomel, 141 N.W.2d at 598, the court looked to the particular circumstances of the case and said when plaintiff was pursuing "immediate trial status" the predecessor to the current 215.1 did not require dismissal of the case. In this case, perhaps plaintiff could have more vigorously pursued trial status. However, given the circumstances of this case we do not think that should be the sole element weighed, particularly when the record here shows that the plaintiff was ready and able to bring his case to trial on two prior dates. Accordingly, whether plaintiff could have more vigorously pursued trial status should not be the only test. We also must look to the fact that it was the court's docket that was responsible for the two delays, not the plaintiff's lack of diligence. As the supreme court said in Baty v. City of West Des Moines, 147 N.W.2d at 210, a crowded docket may be one factor in permitting courts to retain jurisdiction in 215.1 cases. In the present case, a crowded docket was the reason for defendant not being able to bring his case to trial as scheduled.

In Gold Crown Properties, 357 N.W.2d at 698, the supreme court found that when defendant approved a rescheduled trial date, such approval operated to estop that party from seeking a dismissal. In the instant case, the defendant did not move for dismissal; the case was dismissed when the trial court found that 215.1 had been violated. The acceptance of the rescheduled trial date by the defendant in this case should also, then, be weighed in our determination of whether plaintiff is entitled to have a trial on the merits.

Although plaintiff does not raise the issue and, accordingly, we do not reach it, we note that the due process clauses of the Iowa and United States Constitutions require sufficient procedural safeguards to protect against the erroneous deprivation of property interests such as plaintiff's interest in his tort claim against defendant.

We believe we should take notice of the role of the court administrator in our district courts. We think that the exceptions to 215.1 suggest that the rule should not be used as a sword as it is being used here. We note that the due process of law guaranteed to all of our citizens may require that when court congestion is the reason for the delay and rescheduling of a trial, the burden be placed on the court administrator to fully notify not only the lawyers involved but the parties themselves. If such a harsh remedy is to be applied, the possibility that the lawyer is no longer working for the client or the lawyer is not being fully diligent must be taken into account. In the alternative, we would suggest that the court administrator submit all cases which are rescheduled due to court congestion directly to the district court for automatic continuances. We firmly adhere to the principle that "due process requires notice reasonably calculated, under all the circumstances, [emphasis added] to apprise interested parties of the pendency of the action and afford them an opportunity to present their

objections." SMB Investments v. Iowa-Ill. Gas & Elec., 329 N.W.2d 635, 639-40 (Iowa 1983).

For the foregoing reasons, we reverse the district court and remand the case for trial on the merits.

REVERSED AND REMANDED.

Hayden, J., concurs; Donielson, P.J., dissents.

DONIELSON, P.J. (dissenting)

I respectfully dissent. I believe this case is of some importance because it determines the magnitude of the court's interest in rule 215.1. The real question is do we now give automatic continuances and shift the responsibility totally to the court administrator even where counsel has taken no action to ensure that his or her case is continued, or do we uphold the intent of rule 215.1 by requiring that except for extremely limited circumstances, notice of dismissal be sent pursuant to rule 215.1 and that continuances be made by motions of the parties. I believe the majority's attempt to further water down the processes of rule 215.1 will only lead to greater confusion and will seriously impair the intent of rule 215.1 to insure that litigation is prosecuted diligently.

The majority relies heavily on Gold Crown Properties v. Iowa District Court, 375 N.W.2d 692, 696 (Iowa 1985), in support of its finding that the court administrator should carry the burden of ensuring that cases be automatically continued where such cases are not tried by the mandatory dismissal date. I have no quarrel with the proposition stated in Gold Crown Properties that the court administrator has been increasingly called upon to assume some of the duties formerly performed by the district court. However, I do not read Gold Crown Properties as holding that the parties may rely on the court administrator to obtain a continuance for them under all circumstances.

In Gold Crown Properties, the Iowa Supreme Court, in holding that the plaintiff's case was not automatically dismissed, noted the extremely complex nature of the case and the fact that there were three summary judgment motions before the trial court several days before the scheduled trial date. 375 N.W.2d at 696-97. The trial court was aware of the fact that the case would not be tried by the scheduled date and ordered a continuance. Id. The Iowa Supreme Court noted this fact and additionally noted that Gold Crown had earlier stipu-

lated to agree to further continuances which the trial court might grant. Id. at 697. The Gold Crown Properties court also noted that throughout the time period in question both parties were still actively pursuing discovery and filing motions. Id. Finally, the court in Gold Crown Properties recognized that throughout the case the plaintiff had repeatedly made attempts to preserve her case. Id. at 699-700.

I find the Gold Crown Properties opinion factually distinct from the present case. The record reveals that the plaintiff was aware of the fact that his case was subject to the provisions of rule 215.1 and that a continuance until March 12, 1985, had been granted. The plaintiff was also aware of the fact that his case was merely a backup to another trial already scheduled on that date and that approximately a week before the trial date the parties were aware that plaintiff's case would most likely not be tried by March 12, 1985. The record also reveals that the assistant court administrator notified both parties' attorneys several days before March 12, 1985, that the plaintiff's case would not be tried. It was not until six months later, however, that plaintiff became concerned and called the court administrator to inquire about rescheduling the case.

Unlike the plaintiff in Kutrules, wherein the plaintiff filed two certificate of readiness and wrote a letter to the presiding judge stating his readiness to proceed, and Gold Crown Properties, wherein the plaintiff consistently filed motions to protect her case, the plaintiff in the present case failed to file a motion for continuance pursuant to rule 215.1 when he learned that his case would not be tried on March 12, 1985. The plaintiff made no attempt to contact the court administrator, and there was no evidence that plaintiff filed any motions to prevent his case from being dismissed. For six months the plaintiff simply did nothing. The plaintiff's inaction is therefore the direct opposite of the attempts made by the plaintiffs in Kutrules and Gold Crown Properties. The

true test is whether the dismissal or failure to reinstate was due to any fault of the plaintiff. See Baty v. City of West Des Moines, 259 Iowa 1017, 1024, 147 N.W.2d 204, 209 (1966). Because a motion for continuance must be presented before a court upon application and with notice, the power to grant a continuance is beyond the authority of a court administrator, and plaintiff's reliance on the court administrator was therefore not well-grounded. Dep't of Gen. Serv. v. R. M. Boggs Co., Inc., 336 N.W.2d 408, 411 (Iowa 1983). Thus, if a motion for continuance is not filed and submitted before the rule 215.1 deadline, except under very limited circumstances, the court will not retain jurisdiction. Schimerowski v. Iowa Beef Packers, Inc., 196 N.W.2d 551, 554 (Iowa 1972). Finally, the plaintiff failed to file an application to reinstate within the six-month period set forth in rule 215.1. For all these reasons, I would prefer to stay with the single rule that if the case is not tried it must be continued by the parties' motion with little or no exception, and I would affirm the trial court's dismissal.