FILED
MAY 2 3 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GARY MANWARREN and TRUDY MANWARREN,	)	
Plaintiffs-Appellees,	)	247
vs.	)	
PALO ALTO COUNTY, IOWA,	)	9-77 / 88-962
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Palo Alto County (21220), Tom Hamilton, Judge.

This appeal involves the jurisdictional authority of the district court to enter a ruling nullifying the clerk of court's dismissal of plaintiffs-appellees' claim against defendant-appellant. **AFFIRMED.**

Peter C. Hart, Palo Alto County Attorney, for the defendant-appellant.

Kelley A. Rice, Legal Services Corp. of Iowa, for the plaintiffs-appellees.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

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This appeal involves the jurisdictional authority of the district court to enter a ruling nullifying the clerk of court's dismissal of plaintiffs-appellees Gary and Trudy Manwarren's claim against defendant-appellant Palo Alto County, Iowa. We affirm the trial court.

Because this case appears procedurally unique, we shall set forth the events leading to this appeal. In 1983 the Manwarrens received approval for county payment of obstetrical care at the University of Iowa Hospitals under Iowa Code chapter 255. Due to complications and the premature labor, Ms. Manwarren and the baby were treated at a Sioux Falls, South Dakota hospital. The defendant county refused to pay the out-of-state costs. The Manwarrens filed a petition for declaratory judgment for the medical bills on April 20, 1984, naming as defendants Palo Alto County and Mary Potter as general relief director for the county, and individually. An answer was eventually filed and on August 13, 1985, an Iowa R. Civ. P. 215.1 "subject to dismissal notice" was sent to the Manwarrens.

On December 31, 1985, the Manwarrens sought and received an order avoiding dismissal and continuing the case until June 30, 1986. The case was automatically dismissed on this date. On October 20, 1986, plaintiffs were then granted a reinstatement with the understanding the case would be dismissed if not tried prior to April 1,

1987. Plaintiffs filed a motion for summary judgment on February 25, 1987, and defendants resisted. A telephone conference hearing was held on the motion. The district court's ruling, filed May 1, 1987, granted the Manwarrens summary judgment against the county and Mary Potter in her official capacity but overruled the motion as to Mary Potter individually.

The clerk of court then issued a "Notice of Dismissal and Taxation of Court Costs" which stated:

> ORDER filed 10-20-86, reinstated above cause and Ordered it would be dismissed if not brought to trial prior to April 1, 1987. Dismissal was not filed on April 1, 1987, due to Motion to be ruled on. Ruling on Motion has now been filed and this notice of dismissal is filed.
>
> Costs are taxed to the Plaintiff and Judgment is entered accordingly.
>
> Dated this 6th day of May, 1987.

No action was taken by plaintiffs' counsel until a motion to vacate this dismissal was filed April 18, 1988, stating the medical bills remained unpaid despite the summary judgment ruling. The motion requested the court to vacate the dismissal, reinstate the case and order defendants to comply with the previous ruling. Defendants resisted the motion arguing the district court did not have jurisdiction to reinstate the case after a 215.1 dismissal because plaintiffs' motion to reinstate was filed later than six months after the dismissal. On May 2, 1988, the district court denied the Manwarrens' motion to vacate on the ground it was an untimely reinstatement application.

On May 12, 1988, the plaintiffs filed a motion to amend the May 2 order with a supporting memorandum. Again defendants resisted. On June 2, 1988, the district court filed a ruling and order which found the clerk of court was without authority to dismiss the Manwarrens' claim as to the county and Mary Potter in her official capacity due to the summary judgment ruling. The dismissal as to these parties was nullified. The order of May 2 was also nullified. Plaintiffs' motion to "Amend," which requested defendant county abide by the summary judgment ruling, was sustained.

Defendant appeals from this amended ruling contending the district court lacked jurisdiction to nullify the clerk's dismissal of plaintiffs' case under either Iowa R. of Civ. P. 215, or 253 due to the untimeliness of plaintiffs' motions to vacate the dismissal. We affirm the district court.

Defendant's objections based on jurisdictional grounds are without merit. The district court's June 1, 1988 order makes it clear the court was not nullifying the dismissal pursuant to its authority under Iowa R. of Civ. P. 215.1, 252, or 253. Therefore the time limitations and notice provisions contained in those rules were not applicable to the Manwarrens' motion.

The district court had the inherent authority to review the validity of the dismissal when the Manwarrens requested

the court to enforce its summary judgment ruling. Although a district court does not have authority to revisit and decide issues differently after making a final judgment, the court does retain jurisdiction during and after an appeal to enforce such a judgment. Franzen v. Deere & Co., 409 N.W.2d 672, 674 (Iowa 1987).

The Manwarrens' motion entitled "Motion to Vacate Dismissal" was not, as the district court noted, a model of clarity. This motion and the subsequent "Motion to Amend," which fully explained the situation, both requested the court to enforce the summary judgment ruling which had not been appealed. The Manwarrens were not seeking reinstatement of a properly dismissed case or the vacation or modification of this ruling. See Iowa R. of Civ. P. 215.1 and 252. The briefs and memorandums filed by both parties, which support and resist the Manwarrens' motion, indicate the validity of the dismissal was fully litigated and defendant was certainly aware enforcement of the summary judgment was at issue. The district court had jurisdiction to rule on plaintiffs' motions.

The district court properly found the dismissal invalid as to the county and Mary Potter acting in her official capacity. Defendant argues plaintiffs' case had not been "tried" by April 1, 1987, so the dismissal was automatic on that date regardless of when clerk entered it on the docket sheet. The issue then becomes was the order requiring the

case be "tried" by April 1 complied with when the district court had a hearing and took under advisement plaintiffs' motion for summary judgment on March 23, 1987. A review of the motions, resistance, and briefs filed in support thereof show this motion was dispositive of all the issues and not a partial motion for summary judgment. The district court was correct in finding the case had been "tried" within the meaning of the previous order. See Nuzum v. State, 300 N.W.2d 131, 133 (Iowa 1981); Estate of Campbell, 253 N.W.2d 906, 908 (Iowa 1977); Stearns v. Kean, 303 N.W.2d 408, 410 (Iowa 1981). The purpose of rule 215.1 is to assure the timely and diligent prosecution of cases on the docket. Doland v. Boone County, 376 N.W.2d 870, 872 (Iowa 1985) (citing Miller v. Bonar, 337 N.W.2d 523, 526 (Iowa 1983)). Rule 215.1 provides in pertinent part:

> 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.

Iowa R. Civ. P. 215.1.

This language has been interpreted to mean a filed application for continuance alone is not sufficient to avoid dismissal unless it is accompanied by an order continuing the case prior to the mandatory dismissal date. Doland, 376 N.W.2d at 872 (citing Koss v. City of Cedar Rapids, 300 N.W.2d 153, 157 (Iowa 1981); Brown v. Iowa District Court, 272 N.W.2d 457, 458 (Iowa 1978); Fankell v.

Schober, 350 N.W.2d 219, 223 Iowa App. 1984)). The court in Doland recognized an exception to this rule as shown in Schimerowski v. Iowa Beef Packers, Inc., 196 N.W.2d 551 (Iowa 1972). In that case the court held "where a motion for continuance is filed and submitted on notice before the rule 215.1 deadline for trial, continuance or dismissal, jurisdiction is returned by the trial court while it has such motion under advisement." Id. at 554. This line of cases clearly indicate when a 215.1 motion for continuance has been submitted and the parties are awaiting for a ruling on that motion, the district court retains jurisdiction until such ruling has been made and thereby avoids a 215.1 dismissal by operation of law. See Koss v. City of Cedar Rapids, 300 N.W.2d at 157.

The same analysis applies to this present case where the district court had a hearing and took under advisement a dispositive summary judgment motion prior to the automatic dismissal date.

Defendant argues the clerk could not have determined whether the case had been submitted or tried by reviewing the file on April 1, 1987. A review of the docket sheet shows the filing and hearing on the motion for summary judgment prior to April 1. The language of the clerk's May 6, 1987 dismissal notice indicates the delay in filing the notice was because of this pending motion. We hold the district court retained jurisdiction to make its ruling on the motion and the April 1, 1987 dismissal was avoided.

The purpose of rule 215.1 is not frustrated by this ruling as the Manwarrens had, in effect, timely prosecuted their case in the dispositive summary judgment hearing before April 1.

The district court's finding the dismissal was unauthorized as to the county and Mary Potter in her official capacity but proper as to Mary Potter individually was correct. We affirm the district court's order requiring the defendant county to comply with the May 7, 1987 ruling on plaintiffs' summary judgment motion.

Costs of this appeal are taxed to defendant.

AFFIRMED.