FILED
FEB 26 1985
344
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RALPH SCOTT,

Plaintiff-Appellant,

vs.

JIMMIE PORTER, B. J. FURGERSON, and RUTH ANDERSON,

Defendants-Appellees.

Filed February 26, 1985

4-552
84-791

Appeal from the Iowa District Court for Black Hawk County - Roger F. Peterson, Judge.

Plaintiff appealed the district court's overruling of his motion to reinstate this case. On appeal, he asserts that the district court erred in failing to reinstate this case under the mandatory provisions of Iowa Rule of Civil Procedure 215.1. He alternatively asserts that the district court abused its discretion in failing to reinstate this case under the discretionary provisions of Iowa Rule of Civil Procedure 215.1. AFFIRMED.

Gary W. Kazragis of Richert, Thompson & Kazragis, Reinbeck, for plaintiff-appellant.

David J. Dutton and Cheryl L. Weber of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, for defendants-appellees Anderson and Porter.

Jay P. Roberts and Jim D. DeKoster of Swisher & Cohrt, Waterloo, for defendant-appellee Furgerson.

Considered by Oxberger, C.J., and Donielson and Snell, JJ.

DONIELSON, J.

Plaintiff appeals from the district court's denial of his motion to reinstate this case after a dismissal under Iowa R. Civ. P. 215.1. He asserts that the court erred in failing to reinstate the case under the mandatory provisions of Rule 215.1. In the alternative, he asserts that the district court abused its discretion in failing to reinstate the case under the discretionary provisions of Rule 215.1. We affirm.

In November 1980, plaintiff brought this action for slander against the three defendants. Plaintiff filed a trial certificate in April 1981, but defendants' resistance to it was sustained on the grounds that the case was not ready for trial and discovery was incomplete. In November 1982, plaintiff filed an application for continuance under Rule 215.1. The trial court granted the application but denied further interest on any potential recovery by the plaintiff.

In January 1983, plaintiff took depositions from two persons. In April 1983, plaintiff mailed a proposed pretrial report to defense counsel. However, in June 1983, counsel for defendants Anderson and Porter moved to withdraw. Their application was granted and new counsel was appointed. Plaintiff then sent another pretrial report to defense counsel. In July 1983, the court issued a preliminary pretrial order setting the discovery deadline of September 16, 1983, and a deadline for amendments and additional parties of October 31, 1983. In October 1983, plaintiff filed a trial certificate and the court ordered a pretrial conference set for January 9, 1984.

In order to avoid dismissal under Rule 215.1, plaintiff filed an application for continuance. In December 1983, it was denied by the district court and the case was dismissed. On January 3, 1984, plaintiff applied for reinstatement, asserting that the dismissal was the result of oversight, mistake, or reasonable cause. The motion was overruled and plaintiff has appealed from this result.

Iowa Rule of Civil Procedure 215.1 requires all cases on file for more than one year by July 15 to be tried by January 1 of the next year. The purpose of this

rule is "to clear the docket of dead cases and to assure the timely and diligent prosecution of these cases which should be brought to a conclusion." Brown v. Iowa District Court, 272 N.W.2d 457, 458 (Iowa 1978).

The final paragraph of Rule 215.1 provides in part:

> 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.

Thus, reinstatement is mandatory if the plaintiff demonstrates oversight, mistake or reasonable cause. In all other situations, reinstatement is discretionary.

Examination of the record compels the conclusion that mandatory reinstatement is not warranted. In 1983, plaintiff took two depositions, filed a pretrial report and filed a trial certificate. Deadlines were set for discovery and two defendants changed counsel. The only other action taken by the plaintiff in 1983 was the motion for continuance to avoid dismissal under Rule 215.1.

We are inclined to agree with defendants' characterization of these events as "merely window-dressing" a file that was inactive since written discovery was completed in 1981. This is not the type of situation for which mandatory reinstatement is required.

Plaintiff also argues that the court should have reinstated the case under the discretionary reinstatement provisions of Rule 215.1. We disagree.

> The exercise of a lower court's discretion is not reviewable; it is only the alleged abuse of that power which is reviewable on appeal. Generally, abuse of discretion will be found only where there is no support for the decision in the hearing evidence.

Rath v. Sholty, 199 N.W.2d 333, 336 (Iowa 1972). We believe there is sufficient evidence in the record to support the trial court's conclusion. As previously noted, only minimal action has been taken since the petition was filed in 1980. All written discovery was completed in 1981 and only two depositions have been taken since that time. In fact, most of the docket entries involve proceedings under

215.1. In such a situation we cannot say there was an abuse of discretion.

AFFIRMED.