IN THE COURT OF APPEALS OF IOWA

FILED
MAY 25 1982
CLERK SUPREME COURT

DEAN I. ROHRET a/k/a DEAN ROHRET and DEAN F. ROHRET and KAREN F. ROHRET a/k/a KAREN ROHRET,

Plaintiff-Appellee,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant.

Filed May 25, 1982

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2-59
2-65192

Appeal from Johnson District Court - Thomas Horan and Robert Osmundson, Judges.

Defendant appeals from trial court's judgment awarding plaintiffs damages on their appeal from the judgment entered by the condemnation commission, asserting that trial court erred in failing to dismiss the appeal on grounds that plaintiffs failed to show good cause why they did not file their petition within 20 days of perfection of their appeal. AFFIRMED.

Thomas J. Miller, Attorney General of Iowa, and Craig Gregersen, Assistant Attorney General, for defendant-appellant.

Robert W. Jansen of Trott & Jansen, Iowa City, Iowa, for plaintiff-appellee.

Heard en banc.

PER CURIAM

Defendant, Iowa Department of Transportation, appeals from trial court's judgment awarding plaintiffs, Dean and Karen Rohret, $12,000 on their appeal from the judgment entered by the condemnation commission in connection with the condemnation of plaintiffs' property. On appeal, defendant assert trial court erred in failing to dismiss the appeal on grounds that plaintiffs failed to show good cause why they did not file their petition within 20 days of perfection of their appeal. We affirm.

Defendant commenced proceedings to condemn plaintiffs' property for highway purposes. On February 13, 1980, the condemnation commission entered an award of $7,300 for plaintiffs. On March 10, 1980, plaintiffs timely served a notice of appeal upon defendant. The notice of appeal was filed with the clerk of the district court on March 17, 1980. On April 9, 1980, defendant filed a motion to dismiss based on plaintiffs' failure to file a petition stating specifically the items of damage and the amount thereof, within the statutory requirement of twenty days from perfection of the appeal, as required by section 472.22, The Code 1979. On April 22, 1980, plaintiffs filed their resistance to the motion to dismiss, and filed their petition. On May 22, 1980, trial court overruled the motion to dismiss. Trial court found that the filing of the petition was merely procedural and not jurisdictional, and that there was good cause shown for late filing of the petition. The case was subsequently tried before a jury which found in favor of plaintiffs in the amount of $12,000. On March 18, 1980, trial court, accordingly, entered judgment for that amount. This appeal followed.

I. Scope of Review. Since this is an action tried by ordinary proceedings, our review is for correction of errors only. Iowa R. App. P. 4.

II. Discussion. Defendant argues that trial court erred in failing to dismiss this action on the grounds that plaintiffs failed to file their petition within the statutory period and did not show good cause for such failure. Plaintiffs argue

that dismissal is not required by section 472.22, The Code, and that trial court did not abuse its discretion in finding good cause to grant additional time for filing the petition. We agree with plaintiffs' analysis.

Sections 472.18 and 472.22, The Code, govern condemnation appeals. Under these provisions, an appeal is perfected, and the district court acquires jurisdiction, when the notice of appeal is served upon the adverse party, his agent or attorney, lienholders, and the sheriff. § 472.18, The Code; see also O'Neal v. State, 214 Iowa 977, 981, 243 N.W. 601, 604 (1932). Since "the appeal is perfected and the district court acquires jurisdiction on timely compliance with the provisions on perfecting the appeal[,] filing the petition within the time separately specified for filing pleadings is not jurisdictional." Heins v. Iowa State Highway Comm., 185 N.W.2d 804, 812 (Iowa 1971), citing O'Neal v. State, 214 Iowa 977, 243 N.W. 601. Thus, failure to file the petition "will not necessarily work a dismissal of the case." O'Neal, 214 Iowa at 982, 243 N.W. at 604.

Under prior provisions of the code, the Supreme Court has indicated that affirmance of the district court's refusal to dismiss the case would be in order when 1) there was nothing in the record tending to indicate that either party had any intention of waiving his or her rights or abandoning the litigation, 2) the delay was short, and 3) there was no prejudice resulting from the delay. Id. We are compelled to conclude that the supreme court's guidance in O'Neal is applicable to the instant case. While the pertinent provision of the Iowa code was amended by the Sixty-second General Assembly (Acts of 62nd G.A., ch. 400, § 101), we do not believe that this amendment alters the analysis. The pertinent legislative change concerns the additional language that "[t]he court may for good cause shown grant additional time for filing of the petition." § 472.22, The Code 1981. We believe this language clearly illustrates the continued validity of the holding in O'Neal, that filing of the petition is not jurisdictional, but merely prodedural, and that

failure to file on time does not necessarily require dismissal.

This amendment also allows the district court, on a finding of good cause, to grant additional time for filing of the petition. Iowa case law vests lower courts with considerable discretion when deciding issues of good cause. See, for example, State v. Dickerson, 313 N.W.2d 526, 529 (Iowa 1981) (delay of criminal proceedings); Rudolph v. Iowa Methodist Medical Center, 293 N.W.2d 550, 554 (Iowa 1980) (extending time for filing post-trial motions); Federal Deposit Ins. Corp. v. National Surety Corp., 281 N.W.2d 816, 818 (Iowa 1979) (late jury demand); Flexsteel Indus., Inc. v. Morbern Indus. Ltd., 239 N.W.2d 493, 596 (Iowa 1976) (setting aside default judgment); Brass v. Sholty, 199 N.W.2d 333, 335 (Iowa 1972) ("reasonable cause" to set aside dismissal under rule 215.1); Jones v. Iowa State Highway Comm'n, 157 N.W.2d 86, 87 (Iowa 1968) (discovery protective orders).

As we have said above, the requirement of filing a petition within 20 days of perfecting the appeal is procedural only. O'Neal, 214 Iowa at 982, 243 N.W. at 604. Its purpose is to prevent delay and secure a trial in regular order. Id, 214 Iowa at 981-82, 243 N.W. 604. In this case, plaintiffs resisted defendant's motion to dismiss by stating that plaintiffs' attorney's obligations had resulted in an oversight. We cannot say the district court's consideration of an attorney's calendar evidences an abuse of its discretion in determining whether good cause exists to grant additional time for filing of the petition. The district court unquestionably has considerable discretion in managing its docket and ensuring that trials progress in a regular order. The delay, if any, caused by plaintiffs' failure to file their petition within the twenty days was short. No prejudice resulted from the delay. There is nothing in the record tending to indicate that the parties had any intention of waiving their rights or abandoning the litigation. We are thus satisfied that the ruling of the district court upon defendant's motion to dismiss was proper and must be affirmed.

AFFIRMED.