FILED
JUN 15 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

152

DALE E. PETTY, MARILYN PETTY and PETTY LIVESTOCK EQUIPMENT MANUFACTURING AND DISTRIBUTING, INC.,

Plaintiffs-Appellants,

vs.

WEBER URETHANE INSULATION, INC.,

Defendant-Appellee.

9-102
88-393

Appeal from the Iowa District Court for Hardin County (69-274), Carl E. Peterson, Judge.

The plaintiffs have appealed contending the district court erred by concluding it lacked jurisdiction to reinstate the suit following dismissal of want of prosecution. **AFFIRMED.**

Jerry Zimmerman, of the Joe Johnston Law Firm, P.C., Cedar Rapids, for the plaintiffs-appellants.

John D. Hilmes and Hugh J. Cain, of Duncan, Jones, Riley & Finley, P.C., Des Moines, for the defendant-appellee.

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

OXBERGER, C.J. 153

The question in this case is whether the district court erred by concluding it lacked jurisdiction to reinstate the suit following dismissal for want of prosecution. Our review is for the correction of errors at law. Rath v. Sholtz, 199 N.W.2d 333 (Iowa 1972). The trial court's findings of fact and inferences inherent therein are binding upon this court if supported by substantial evidence. Id. We affirm.

The subject of this case is a fire which occurred on November 19, 1976. Plaintiff filed the petition on November 18, 1981. The court has intervened on several occasions to set discovery deadlines which resulted in sanctions on one occasion.

The original Try or Dismiss Notice was to be effective January 1, 1984. However, the trial court concluded that an order dated November 7, 1983, directing plaintiff's counsel not to refile a trial certificate until he had authority to pursue the matter "if the case is still alive" kept the case alive. We agree.

On June 18, 1984, an order was issued fixing the time of pretrial conference. The court noted "If this case is not tried by July 1, 1985, it shall be dismissed." July 1, 1985 came and went. No application was made to remove the case from the effect of rule 215.1 prior to that date. No trial was held. No application was made for reinstatement after it was dismissed on July 1, 1985.

Somehow this case managed to stay alive and on October 15, 1985, an order was entered removing the case from the operation of rule 215.1 for 1985 and directing the case stand dismissed on December 31, 1986. A subsequent order of March 24, 1986, served to remind the parties of the December 31, 1986 deadline.

On December 29, 1986, upon joint application of the parties the court entered an order which provided: "This case is removed from the effect of R.C.P. 215.1 for January 1, 1987, until it is submitted and resolved in April 1987." A trial date had been set for April.

April came and went. No application for extension of the effect of rule 215.1 was filed prior to that date. No trial was held. No application for reinstatement was filed within six months after that date.

On January 1, 1988, the plaintiffs' lawsuit was automatically dismissed for want of prosecution pursuant to rule 215.1. Plaintiffs appeal the district court's denial of their motion to reinstate the lawsuit.

The purpose of rule 215.1 is to promote expeditious trial of cases on the merits by clearing the docket of dead cases and assuring "the timely and diligent prosecution of those cases that should be brought to a conclusion." O'Brien v. Mullapudi, 405 N.W.2d 815, 816 (Iowa 1987) (quoting Brown v. Iowa Dist. Court, 272 N.W.2d 457, 458 (Iowa 1978)). The reinstatement provisions of rule 215.1

ease the plight of the dismissed plaintiff by allowing the party back into court on a proper showing under the rule. Id. (citing Doland v. Boone County, 376 N.W.2d 870, 873 (Iowa 1985)).

It is the duty of the party desiring the court to retain jurisdiction of their action at the end of the "try or dismiss" term to file a timely application and secure a court order continuing the case to a future term or date. Frankell v. Schober, 350 N.W.2d 219, 222 (Iowa App. 1984) (citing Baty v. City of West Des Moines, 259 Iowa 1017, 1023, 147 N.W.2d 204, 208 (1966)). Unless the trial court's jurisdiction is preserved under the rule, the court cannot do anything but dismiss the case. Id.

We find this case was dismissed on July 1, 1985. The court lacked jurisdiction after that time due to a lack of timely application under rule 215.1. However, even if the case were not dismissed on July 1, 1985, which we believe it was, it was dismissed on April 30, 1987, for the same reason. This case is dismissed as a matter of law. We find no abuse of discretion in the trial court's denial of plaintiff's motion to reinstate.

AFFIRMED.