



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA ex rel,	)	
LINDA R. BROOD,	)	
Plaintiff-Appellee,	)	Filed December 27, 1979
vs.	)	
THOMAS HANSON,	)	305
Defendant-Appellant.)		<u>2-62942</u>

Appeal from Cerro Gordo District Court - L. E. Plummer, Judge.

Defendant in a paternity and child support action brings an interlocutory appeal from order granting a continuance. Reversed and Remanded.

Thorkel E. Sondrol of Sondrol & Schoeller, Clear Lake, for defendant-appellant.

Rolf Aronsen, Assistant County Attorney, Mason City, for plaintiff-appellee.

Submitted to Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Defendant in a paternity and child support action brings an interlocutory appeal from order granting a continuance. For reversal, defendants contend the case was dismissed by operation of law under Iowa R. Civ. P. 215.1 for want of prosecution and a continuance is not justified. We reverse the order of the trial court and remand this case for dismissal.

I.

Plaintiff brought this paternity action on July 7, 1975, alleging defendant was father of her child. Defendant timely filed an answer, demand for jury trial, and interrogatories, which plaintiff answered on December 8, 1975. On July 19, 1976, a notice of dismissal under Iowa R. Civ. P. 215.1 was issued requiring the case to be dismissed if not tried prior to December 31, 1976. On application of Assistant County Attorney Philip L. Garland, joined by defense counsel, the case was continued on January 4, 1977, until July 1, 1977. No action occurred prior to July 1, 1977.

Notice of dismissal under Iowa R. Civ. P. 215.1 was again issued on July 20, 1977, requiring dismissal of the case if it were not tried prior to December 31, 1977. On December 27, 1977, the case was continued to December 31, 1978, with a notation on the calendar no further continuance would be granted. No further action occurred until a motion for continuance was filed on December 11, 1978, by Assistant County Attorney Rolf Aronsen. The matter was continued on December 12, 1978, until July 1, 1979; defendant's application for an interlocutory appeal from this order was granted February 5, 1979.

II.

The purpose of Iowa R. Civ. P. 215.1 "is to clear the docket of dead cases and to assure the timely and diligent prosecution of those cases that should be brought to a conclusion." Brown v. Iowa District Court for Polk County, 272 N.W.2d 457, 458 (Iowa 1978). Applying the rule will often produce harsh results, but this is unavoidable if the desired purpose is to be achieved. Id.; Kutrules v. Suchomel, 253 Iowa 1206, 1212, 141 N.W.2d 593, 597 (1966); Talbot v. Talbot, 255 Iowa 337, 340, 122 N.W.2d 456, 458 (1963).

The controlling issue of our decision is whether the case was dismissed by operation of law on July 1, 1977, when it had not been tried and plaintiff subsequently

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failed to apply for reinstatement. There are two general principles applicable to the resolution of this issue. A continuance of a case does not remove it from operation of the rule, but merely delays the effective date of dismissal. Brown, 272 N.W.2d at 488; McKinney v. Hirstine, 257 Iowa 395, 398, 131 N.W.2d 823, 825 (1965). Contra, Johnson v. Linquist, 184 N.W.2d 681, 683 (Iowa 1971) (Becker, J., concurring specially). If the order continuing the case is not complied with, the case stands dismissed. Brown, 272 N.W.2d at 488.

The continuance granted January 4, 1977, stayed until July 1, 1977, the operation of Iowa R. Civ. P. 215.1, under which notice of dismissal was issued July 19, 1976. Since the case was not tried nor did the plaintiffs apply for a continuance, the case was dismissed by operation of law on July 1, 1977. Brown, 272 N.W.2d at 458; Iowa R. Civ. P. 215.1. Neither the clerk's failure to remove this case from the docket nor the court's omission of entering an order of dismissal saved this action. Werkmeister v. Kroneberger, 262 N.W.2d 295, 296 (Iowa 1978); Baty v. City of West Des Moines, 259 Iowa 1017, 1023, 147 N.W.2d 204, 208 (1966).

A dismissed case may be reinstated under the discretionary or mandatory provisions of Iowa R. Civ. P. 215.1 only on timely application and proper showing of cause by the party seeking to restore the case to the active list. Werkmeister, 262 N.W.2d at 296. A continuance is not a reinstatement because it may not be granted after dismissal since the trial court is without jurisdiction or power to do anything except dismiss the case without prejudice. Kutrules, 258 Iowa at 1212, 141 N.W.2d at 597; Gamel v. Perry, 256 Iowa 1129, 1134, 130 N.W.2d 550, 552-53 (1964). The continuance granted by the court on December 29, 1977, could not resurrect this case after its dismissal.

Plaintiff asks that her application for a continuance, filed December 28, 1977, be treated as an application for reinstatement under Iowa R. Civ. P. 215.1. We cannot accept her argument even though this means dismissal of her action. The pleading was entitled "APPLICATION FOR CONTINUANCE AND NOTICE," and the trial court ordered the case "continued." Interpreting these words to mean the case was reinstated under Iowa R. Civ. P. 215.1 requires a strained reading, a reading we cannot reasonably accept. While our decision requires dismissal of plaintiff's action, we note what the

supreme court has said regarding this result:

The rule that courts favor trials on the merits should be qualified to read that courts favor expeditious trials on the merits, under settled rules of procedure. It should not be stretched to the point where a judgment will be vacated when the petitioner, through his counsel, has ignored plain mandates of the rule with ample opportunity to abide by them. To do so would be to abrogate the rule and to reward negligence or inattention.

Windus v. Great Plains Gas, 255 Iowa 537, 600, 122 N.W.2d 901, 909 (1963) (emphasis in original), quoted in Wharff v. Iowa Methodist Hospital, 219 N.W.2d 18, 22 (1974).

We hold this case was dismissed by operation of law, Iowa R. Civ. P. 215.1, on July 1, 1977, for want of prosecution after a continuance was granted. The continuances granted on December 29, 1977, and December 12, 1978, were ineffective since the trial court was without jurisdiction to order anything but dismissal. The continuances also did not reinstate the case under Iowa R. Civ. P. 215.1. We reverse the order of the trial court and remand this case for dismissal.

Reversed and remanded for entry of appropriate order.

REVERSED AND REMANDED.