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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROBERT LEE MORGAN and DOROTHY MORGAN,

Plaintiffs-Appellants,

vs.

HOWARD W. SMITH and SHIRLEY K. SMITH,

Defendants-Appellees.

Filed February 5, 1980

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2-61932

Appeal from Hamilton District Court - Russell J. Hill and Newt Draheim, Judges.

Plaintiffs appeal from dismissal of personal injury action under Iowa R. Civ. P. 215.1, contending trial court erred in overruling application for reinstatement.

AFFIRMED.

Greg A. Life, Oskaloosa, for plaintiff-appellant.

Patrick B. Chambers, of Lund & Chambers, Webster City, and Russell R. Henry, Jewell, for defendants-appellees.

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

CARTER, J.

Plaintiffs appeal from the refusal of the trial court to reinstate their personal injury action previously dismissed under Iowa R. Civ. P. 215.1.

Plaintiffs commenced this action on April 16, 1976. On August 8, 1977, the clerk of the district court, in accordance with Iowa R. Civ. P. 215.1, filed a notice notifying the parties that the case would be dismissed pursuant to that rule if not tried prior to January 1, 1978. Plaintiffs filed a motion for a continuance on December 22, 1977. A hearing on the continuance motion was held on January 16, 1978. The trial court denied the motion for a continuance by order of Judge Hill entered on that date. The case was dismissed in accordance with rule 215.1 on January 19, 1978. On February 10, 1978, plaintiffs filed an application for reinstatement of their cause pursuant to the provisions of rule 215.1. On March 20, 1978, Judge Draheim overruled the application for reinstatement on the ground that the issue had already been ruled on by the order overruling plaintiffs' motion for a continuance. Plaintiffs, on appeal, challenge the latter ruling.

On our review of the record, we conclude that plaintiffs' argument incorrectly perceives the import of Judge Hill's ruling of January 16, 1978. To characterize that ruling as merely involving a motion for continuance and to apply legal theory generally applicable to continuances is to miss the real issue presented.

The motion of December 22, 1977, was not a motion for continuance in the generally accepted sense. There was no scheduled trial date which plaintiffs could ask to have continued. The December 22, 1977, motion was, in reality, a request by plaintiff to be relieved from the operation of Iowa R. Civ. P. 215.1.

The issues presented on such an application are completely different from those ordinarily presented by a motion for continuance. The latter involves the question of why, through no fault of the moving party, substantial justice will more nearly be obtained by changing a trial date which has already been fixed. The primary issue is the suitability of that particular date for the trial of the case given conflicting demands of one or more of the parties. On a motion to be relieved from the operation of rule 215.1, where there is no trial date already established, the issue is whether "satisfactory reason for want of prosecution" has been demonstrated by the plaintiffs.[1] This requires

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[1] Iowa R. Civ. P. 215.1 provides for dismissal of cases subject to its application "unless satisfactory reasons for want of prosecution or grounds for continuance be shown." We construe this language to mean that if the case is not set for trial prior to the end of the calendar year which triggers automatic dismissal, satisfactory reason for want of prosecution must always be shown to avoid such dismissal. The language concerning continuances is intended to apply to those cases timely set for trial but which are thereafter continued for trial commencing beyond the calendar year which would otherwise trigger dismissal.

the court to review the entire course of proceedings prior to the motion in order to determine the reasons, if any, the plaintiffs have been unable to comply with the dictates of rule 215.1.

In the present case, the motion to be relieved from the operation of rule 215.1 (labeled a motion for continuance) is based upon two grounds: (1) that plaintiffs' attorney did not realize until December 12, 1977, that the case was subject to rule 215.1; and (2) that the senior member of the law firm representing plaintiffs was ill and absent from the office from May 26, 1977 until September 1, 1977.[2]

Hearing was held on this motion and it was denied by Judge Hill. In his ruling, Judge Hill made a finding of fact that "satisfactory reasons have not been shown for want of prosecution of the within cause." Certainly the contrary does not appear as a matter of law from the record before us. But even if it did, no appeal was taken from Judge Hill's order or the resulting dismissal of plaintiffs' action under rule 215.1. Such dismissal thus constitutes a final judgment in which inheres the ruling that the plaintiffs failed to show satisfactory reasons for want of prosecution.

Following the dismissal under rule 215.1, plaintiffs filed an application for reinstatement of the action based upon the last paragraph of that rule (added by ch. 487, section 2, 61st G.A.). The only reason advanced in said application is the following:

> That the dismissal herein was the result of oversight, mistake and other causes by which Plaintiff's attorney and his staff failed to realize that said cause was under Rule 215.1.
>
> That once Plaintiff's attorney realized said cause was under Rule 215.1 all action to keep said cause instated was taken by Plaintiffs attorney.

This obviously was one of the same grounds previously urged to Judge Hill, as constituting satisfactory reasons for want of prosecution, and rejected by him.

We cannot conclude that it was the intent of the legislature to permit readjudication of issues already litigated by means of an application for reinstatement under ch. 487, section 2, 61st G.A. Relief on such application should be limited to matters that result in automatic dismissal under rule 215.1 in the absence of any formal adjudication by the court.

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[2] At the time such absence from the office on the part of plaintiffs' senior counsel commenced, the action had already been on file since April 16, 1976.

Stated somewhat differently, we conclude that as a matter of law "oversight, mistake and other reasonable cause" cannot be shown when the basis for the dismissal was failure to show satisfactory reason for want of prosecution under the rule. Error, if any, by the court in adjudicating such issues should be corrected by appeal -- not by relitigating the same issue in the trial court.[3] Judge Draheim's ruling was correct and should be affirmed.

AFFIRMED.

Oxberger, C.J., and Johnson, J., concur; Donielson and Snell, JJ., dissent.

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[3] This does not suggest that a timely motion for reconsideration cannot be filed in the district court. Here, Judge Draheim suggested that the plaintiffs ask Judge Hill to reconsider his order, which, apparently, was not done.

SNELL, J. (dissenting)

I dissent. The ruling on a motion for a continuance for purposes of avoiding a rule 215.1 dismissal is a matter within the sound legal discretion of the trial court. Crouch v. Randolph, 213 N.W.2d 673, 678 (Iowa 1973). The trial court may allow a continuance for any cause unless the cause arises "out of the fault or negligence of the applicant." Iowa R. Civ. P. 183(a). The record shows that the cause for the continuance motion in the case at bar was due to the fault or negligence of plaintiffs' attorney.

At the hearing on reinstating the case, a determination should be made whether a mandatory reinstatement is shown on the basis of oversight, mistake, or other reasonable ground. If reinstatement is not mandated, the court should then exercise its discretion on whether for any other reason this case is entitled to reinstatement. See Rath v. Sholty, 199 N.W.2d 333, 335-36 (Iowa 1972); 51 Iowa L. Rev. 496, 501 (1966).

Thus, under the rule 215.1 reinstatement provision, a case need not be irrevocably dismissed in the instance of a trial court ruling that the only asserted ground out of many potentially successful grounds was insufficient to continue the case. The plaintiff's attorney or, as is more likely to be the case, a successor attorney would be allowed a second opportunity to assert sufficient grounds in an application for reinstatement, rather than attaching the right of an innocent litigant in reaching a trial on the merits to an attorney's abilities to assert continuance grounds in situations in which time is often of the essence.

In light of the apparent intent of the legislature in adding the reinstatement provision to rule 215.1 to conform to the policy of trial on the merits, Rath, 199 N.W.2d at 335; 51 Iowa L. Rev. at 502, I would reverse and remand this case for a hearing on the application for reinstatement.

Donielson, J., joins in this dissent.