**IN THE COURT OF APPEALS OF IOWA**

No. 8-584 / 98-0153

**IN THE MATTER OF THE ESTATE OF CLARENCE S. BRANT, Deceased,**

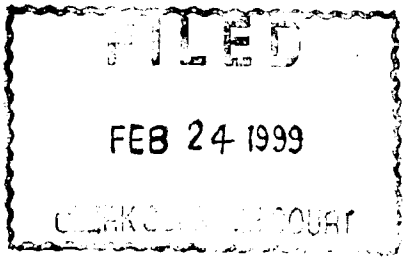
**JOANNE M. BRANT, DIANNA K. BRACK, SANDY A. TOMASH, LARRY C. BRANT, and ANNETTE M. MOSSMAN,**

Plaintiffs-Appellees,

**vs.**

**BETTY LOUISE SCHEETZ MORRIS,**

Defendant-Appellant.




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Appeal from the Iowa District Court for Johnson County, L. Vern Robinson, Judge.

Appellant has appealed an interlocutory order of the district court granting the appellees' request for a jury trial. **AFFIRMED.**

Robert D. Houghton and Sarah J. Gayer of Shuttleworth & Ingersoll, P.C., for appellant.

John C. Wagner and Christopher L. Jorgenson of John C. Wagner Law Offices, P.C., Marengo, for appellees.

Considered by Sackett, C.J., and Huitink and Mahan, JJ. Zimmer, J., takes no part.

**MAHAN, J.**

Betty Morris appeals an interlocutory order of the district court granting plaintiffs' belated request for a jury trial. Morris contends the district court erred in granting plaintiffs' demand for jury trial because they failed to show good cause for the late demand. We affirm.

Clarence S. Brant executed a Last Will and Testament on April 6, 1995. The will named his daughter, Betty Morris, as a beneficiary entitled to all the rest, residue, and remainder of Clarence's property. In addition, the will excluded his son, Kenneth Brant, or any members of Kenneth's family from any benefits of the estate. The will was admitted to probate on March 6, 1997. Kenneth Brant was deceased at the time.

Kenneth's wife, Joanne, and his four children filed a petition on May 7, 1997, alleging lack of testamentary capacity and undue influence. They did not file a demand for jury trial pursuant to Iowa Rule of Civil Procedure 177. Morris answered on June 4, 1997. Plaintiffs filed a jury demand on November 7, 1997. Morris filed her objections to and a motion to strike said demand. The district court entered an order on January 15, 1998, allowing the late demand.

Morris filed an application for interlocutory appeal. The Supreme Court granted the application on February 27, 1998. The sole issue on interlocutory appeal is whether the district court erred in granting a jury trial.

**I. STANDARD OF REVIEW.** The review of this matter is to correct errors of law. Iowa R. App. P. 4. This court's review of the district court decision to grant

a jury trial is for abuse of discretion. *People's Natural Gas v. City of Hartley*, 497 N.W.2d 874, 876 (Iowa 1993). The district court decision will be disturbed on appeal only if clearly erroneous. *Mathias v. Gladson*, 448 N.W.2d 443, 445 (Iowa 1989). We will not find an abuse of discretion unless such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. "Unreasonable" in this context means not based on substantial evidence. *Schettler v. Iowa Dist. Ct.*, 509 N.W.2d 459, 464 (Iowa 1993).

**II. ABUSE OF DISCRETION.** Plaintiffs argued at the hearing held on January 9, 1998, that (1) they did not intend to waive their right to a jury trial; (2) they filed their demand one day after discovering the demand had not been filed; (3) no trial setting conference had been held and, therefore, no trial date or guidelines had been established; (4) no delay would be caused; and (5) Morris would not be prejudiced by the late filing.

The district court, in its order of January 15, 1998, found (1) no pretrial conference had been conducted to set a trial date or scheduling deadlines; (2) plaintiffs' realization that no jury demand had been filed was not so late as to affect the handling of the case by court administration; (3) no prejudice was shown to Morris; and (4) this was "precisely the kind of case which is best presented to a jury so its collective wisdom and common sense may be brought to bear." The district court exercised its discretion and allowed the jury demand.

Demand for jury trial is governed by Iowa Rule of Civil Procedure 177. Rule 177(d) reads:

> (d) Notwithstanding the failure of a party to demand a jury in an action in which such demand might have been made of right, the court, in its discretion on motion and for good cause shown, but not ex parte, and upon such terms as the court prescribes, may order a trial by jury of any or all issues.

Iowa R. Civ. P. 177(d).

Morris contends the phrase "for good cause shown" requires the party who filed an untimely jury demand prove good cause for failure to timely file. Stated differently, Morris argues the district court simply found good cause existed to let the matter proceed to a jury trial and the district court failed to find good cause for the late filing. Thus, Morris contends the district court abused its discretion and the late filing should not be allowed. We disagree.

Rule 177 was amended in 1945 by the 51st General Assembly for the express purpose of granting state trial courts discretion to allow belated demands for jury trials.[1] *See Katcher v. Heidenwirth*, 118 N.W.2d 52, 56 (Iowa 1962). The supreme court in *Katcher* stated:

> Rule 177 requires a showing of the relevant circumstance which in the sound discretion of the trial court excuses or justifies the lateness of the demand, and unless it is made to appear that this discretion was abused, we will not interfere.

*Id.* at 56.

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[1] This amendment, contained in rule 177(d), gave state trial courts discretion similar to federal courts.

The supreme court then went on to specifically discuss the author's comment concerning the addition of rule 177(d),[2] stating:

> However, the addition of the words "for good cause shown" in the Iowa rule has left some doubt as to its meaning. This term in the rule, we think, is flexible and its meaning is not fixed and definite. Each application or motion for trial by jury filed late must be evaluated upon the circumstances appearing, and then determined by the sound discretion of the trial court.
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> We gave that phrase of the rule some consideration in the case of *Schloemer v. Uhlenhopp*, 237 Iowa 279, 21 N.W.2d 457, and held therein that counsel's oversight or inadvertence is not good cause which *compels* the granting of a belated demand. That decision left open the question of whether such a showing or excuse would suffice for a court to permit a jury trial on a belated demand.

*Id.* at 56-57.

This issue has been revisited in several additional cases. Those cases still hold the term "for good cause shown" is flexible and not fixed or definite, each application or motion must be evaluated upon the circumstances of the individual case, and this is an area in which the trial court has broad discretion. *People's Natural Gas*, 497 N.W.2d 874, 875-76 (Iowa 1993); *Iowa Elec. Light & Power Co. v. Lagle*, 430 N.W.2d 393, 396 (Iowa 1988); *Federal Deposit Ins. Corp. v. National Surety Corp.*, 281 N.W.2d 816, 818 (Iowa 1979); *Beneficial Fin. Co. v. Lamos*, 179 N.W.2d 573,

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[2] The comment reads, in part:

> The rule was amended in 1945 by adding subd. (d), to permit the "trial court discretion similar to 'the federal courts' " in granting a *belated* demand for jury trial. Seemingly, this discretion must be *for cause*. Counsel's oversight or inadvertence is not "cause" which *compels* granting the belated demand. *Schloemer v. Uhlenhopp*, 237 Iowa 279, 21 N.W.2d 457. Whether a court may *permit* the jury to be demanded late, on that excuse, is yet an open question.

Iowa R. Civ. P. 177 cmt. (1961).

576 (Iowa 1970); *Hartford Fire Ins. Co. v. Lefler*, 135 N.W.2d 88, 94 (Iowa 1965); and *Sher v. Burche*, 353 N.W.2d 859, 864 (Iowa App. 1984).[3]

We conclude the district court did not exercise its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. We, therefore, affirm the decision of the district court.

**AFFIRMED.**

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[3] These cases are also consistent with federal case law, which states a court "may consider and act upon any and all pertinent factors in the case, including particularly the nature of the issues presented by the pleadings and the general orderly disposition of the court's business." *Kass v. Baskin*, 164 F.2d 513, 515 (D.C. Cir. 1947).