FILED
JUN 15 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

OTTO J. LARSON, JR., d/b/a **LARSON CONSTRUCTION CO.**,	)	
Plaintiff-Appellant,	)	96
vs.	)	
WILFRID F. MACHEAK, SHIRLEY D. MACHEAK, and **MANUFACTURER'S BANK & TRUST COMPANY**,	)	9-87 88-1372
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Winnebago County (No. 13487), Jon Stuart Scoles and Stephen P. Carroll, Judges.

The plaintiff appeals the district court's dismissal pursuant to Iowa Rule of Civil Procedure 215.1. **AFFIRMED.**

David S. Wiggins and Edward N. McConnell of LaMarca, Marcucci, Wiggins & Anderson, P.C., West Des Moines, for plaintiff-appellant.

Kent A. Johanson of Johanson Law Offices, Forest City, for defendants-appellees Macheak.

David Siegrist of Hill & Siegrist, Britt, for defendant-appellee bank.

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

OXBERGER, C.J. 97

The question in this case is whether the district court erred in refusing to reinstate plaintiff's lawsuit after it was dismissed for want of prosecution under Iowa Rule of Civil Procedure 215.1. Our review of the district court's reinstatement decision is not de novo, as in equity, but for errors as in a law proceeding. 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.

I. **Background Facts & Proceedings.**

Plaintiff filed his petition for a mechanic's lien action on April 11, 1985. The defendants filed their answer on May 2, 1985. On October 1, 1985, defendants served interrogatories on the plaintiff. There was no further action on the case until August 1, 1986, at which time the Clerk of Court served on counsel of record a notice indicating that the case would be dismissed on January 1, 1987, if not tried or continued prior to that time. In response, the parties filed on December 9, 1986, a joint application for continuance under rule 215.1. The court then entered an order for continuance removing this case from dismissal and continuing it until December 31, 1987.

There was no activity in the file until December 8, 1987, when the plaintiff filed a motion for continuance under rule 215.1. On the same date, plaintiff filed a trial certificate which indicated that answers to defendants' interrogatories needed to be completed. The interrogatories were answered on December 29, 1987, approximately two years and three months after they were served on the plaintiff.

Plaintiff's motion for continuance on December 22, 1987, was overruled. The court found that there was very little evidence of any effort by the plaintiff to diligently pursue his claim. The court also denied plaintiff's request for reinstatement following dismissal.

II. **Reinstatement of a Case Dismissed Under Rule 215.1.**

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)).

Rule 215.1 provides two bases on which to reinstate a case dismissed under that rule. Iowa R. Civ. P. 215.1. Mandatory reinstatement is required upon a showing that the dismissal was a result of oversight, mistake, or other reasonable cause; otherwise, the district court in its discretion may reinstate the dismissed action. Iowa R. Civ. P. 215.1. A prerequisite to either type of reinstatement is a showing by plaintiffs of reasonable diligence in preparing and pursuing the case for trial. O'Brien at 817 (citing Sladek v. G & M Midwest Floor Cleaning, Inc., 403 N.W.2d 774, 777 (Iowa 1987)). The burden is on the movant to prove an adequate reason for reinstatement. Id. (citing Wharff v. Iowa Methodist Hosp., 219 N.W.2d 18, 22 (Iowa 1974).

Recently our supreme court noted:

> The recurring theme in our mandatory reinstatement decision is that a plaintiff's case should be reinstated if there is a showing by the movant that the attorney had been diligently pursuing the case and preparing it for trial but simply overlooked the rule 215.1 deadline.

O'Brien at 818.

The plaintiff contends the December 31, 1987 dismissal was unwarranted because he had, prior to that date, filed a trial certificate requesting a trial date and a pretrial conference. He contends this action indicated his readiness for trial and should have been sufficient to avoid a dismissal under rule 215.1. The plaintiff also contends his June 1988 request for reinstatement should

have been granted because the dismissal resulted from the oversight or mistake of his former attorney and because he had shown his seriousness about the litigation by retaining new counsel within the six-month discretionary reinstatement period of rule 215.1. As to the December 31, 1987 dismissal, we agree with the trial court that the record belies the assertion that the dismissal was a result of oversight, mistake, or other reasonable grounds. Accordingly, we find plaintiff failed to prove a ground for mandatory reinstatement.

As to discretionary reinstatement, we fail to find an abuse of discretion. This case has been marked by inactivity. Aside from plaintiff answering defendants' interrogatories over two years after they were propounded, this file shows no progress toward trial. In the spirit of the purposes of rule 215.1, we conclude the district court did not abuse its discretion in denying plaintiff's application for reinstatement.

AFFIRMED.