FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CHRISTOPHER POLITO,	)	167
Plaintiff-Appellant,	)	Filed September 25, 1986
vs.	)	6-226 85-1038
ZAZZA, LTD.,		
Defendant-Appellee.		

Appeal from the Iowa District Court for Linn County(LA 10870), Robert E. Ford, Judge.

Plaintiff appeals from denial of his motion to reinstate a case that was dismissed by operation of law pursuant to Iowa R. Civ. P. 215.1. **AFFIRMED.**

Robert W. Matias and Robert F. Wilson of Wenzel, Piersall, Roccolo O& Estlund, P.C., Cedar Rapids, for plaintiff-appellant.

John M. Bickel and Diane Kutzko of Shuttleworth & Ingersoll, Cedar Rapids, and Thomas A. Skorepa and Candy Mobleyof Klockau, McCarthy, Ellson & Marquis, P.C., Rock Island, Illinois, for defendant-appellee.

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

OXBERGER, C.J.

In this appeal, the plaintiff challenges the trial court's order refusing to reinstate his negligence action after its dismissal pursuant to rule 215.1 of the Iowa Rules of Civil Procedure. The plaintiff contends that the trial court erred in failing to find that the case should be reinstated under the provisions of the rule mandating reinstatement when the dismissal resulted from "oversight, mistake or other reasonable cause. . . . " We affirm.

This is an action at law; therefore, our review is on assigned error only. Iowa R. App. P. 4. The principles governing both the operation of rule 215.1 and the scope of review upon appeal are set forth in Rath v. Sholty, 199 N.W.2d 333, 336 (Iowa 1972):

> [T]rial court must initially determine whether the evidence adduced at the hearing constitutes a 'showing' of oversight, mistake or other reasonable cause. This first involves a factual finding which we shall review not de novo, as in equity, but as in a law proceeding. It follows that trial court's findings of fact and inferences inherent therein are binding upon this court if supported by substantial evidence. Rule 244(f)(1), R.C.P. Whether the facts and inferences found constitute 'inadvertence,' 'mistake' or 'other reasonable cause' is not a factual but a legal question on review. 5 C.J.S. Appeal and Error § 1454, p. 591. We have held trial court's interpretation of its findings becomes a question of law which is not conclusive on appeal.

See also Wharff v. Iowa Methodist Hospital, 219 N.W.2d 18, 21 (Iowa 1974).

Following the dismissal of his action, the plaintiff filed a motion to reinstate alleging only that he had no personal knowledge of the operation of rule 215.1, nor did he know why the two attorneys then representing him failed to avoid dismissal. The trial court dismissed the motion, finding that it failed to set forth any specific facts implying mistake or oversight. We agree that the allegations in the motion fall short of the requisites enunciated in Rath. The plaintiff then filed a motion to reconsider pursuant to rule 179(b). This motion was supported by affidavits in which each of the attorneys originally representing

the plaintiff stated their belief that the other had been handling the case. The motion was denied.

Although the plaintiff states in his brief that the affidavits were made part of the record, all parties agreed at the hearing on the motion to reconsider that rule 179(b) does not authorize reopening the record for additional evidence previously omitted in the trial of an issue. See Appeal of Elliot, 319 N.W.2d 244, 247 (Iowa 1982). We find that this principle precludes us from considering the content of the affidavits on appeal.

Furthermore, we find that even if we were to consider the affidavits as part of the record, the available evidence fails to constitute a showing of mistake, oversight, or other reasonable cause as provided in rule 215.1. Although the plaintiff has placed primary reliance upon the supreme court's decision in Rath v. Sholty, 199 N.W.2d 333 (Iowa 1972), where a finding of oversight was made, the record in the instant case reveals no comparable evidence indicative of a desire to advance the case to trial. See Rath v. Sholty, 199 N.W.2d at 336. Indeed, the plaintiff's attorneys at one point stated to the court that the case was not pursued because of their belief that it was not meritorious. We conclude that the plaintiff has failed to sustain his burden of proving that reinstatement is warranted. See Wharff v. Iowa Methodist Hospital, 219 N.W.2d at 23.

AFFIRMED.