FILED
DEC 23 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

WILLIAM V. DeMARANVILLE,

Plaintiff-Appellant,

vs.

ST. LUKE'S REGIONAL MEDICAL CENTER; DR. DONALD J. WAGNER; DR. CHARLES AARON JOHNSON; and SURGICAL CONSULTANTS, P.C.,

Defendants-Appellees.

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6-397
86-155

Appeal from the Iowa District Court for Woodbury County (89963C) Michael S. Walsh, Judge.

Plaintiff appeals default judgment contending the district court abused its discretion by denying him a continuance to permit his newly retained attorneys to prepare for trial. **AFFIRMED.**

Alice S. Horneber, Edward J. Keane, and Stuart J. Cochrane of Margolin, Gildemeister, Willia, Mugan & Keane, Sioux City, Iowa, for plaintiff-appellant.

Thomas J. Shomaker and Robert M. Slovek of Sodoro, Daly & Sodoro, Omaha, Nebraska, and Daniel C. Galvin, Sioux City, Iowa, for defendant-appellee St. Luke's.

Michael W. Ellwanger of Kindig, Beebe, Rawlings, Nieland, Probasco & Killinger, Sioux City, Iowa, for defendant-appellee Wagner.

Francis Fitzgibbons and Harold W. White of Fitzgibbons Brothers, Estherville, Iowa, for defendants-appellees Johnson & Surgical Consultants.

Heard by Oxberger, C.J., Snell, and Schlegel, JJ.

SCHLEGEL, J. 83

The plaintiff filed a medical malpractice lawsuit against several defendants. The plaintiff alleged that a nerve had been severed during surgery, resulting in loss of use of a shoulder muscle. The district court denied plaintiff's motion for a continuance. The district court granted defendants a default judgment pursuant to Iowa Rule of Civil Procedure 230. We affirm.

Plaintiff filed his lawsuit on October 7, 1983. The plaintiff later testified at the hearing on the motion for the continuance that due to the difficulty of finding and keeping attorneys, the case was not actively pursued. In July 1985, the plaintiff was sent a notice under Iowa Rule of Civil Procedure 215.1 informing him that the case would be dismissed for want of prosecution if not tried before January 1, 1986. In September 1985, the plaintiff was sent a notice to appear for trial on January 7, 1986. On January 4, 1986, the plaintiff retained new counsel. On January 7, the date of the trial, plaintiff moved for a continuance to permit his attorneys to prepare for trial. The district court denied the continuance. The district court then granted defendants a default judgment pursuant to Iowa Rule of Civil Procedure 230 due to the plaintiff's unwillingness to present himself for trial on the date scheduled. The plaintiff appeals the default judgment, contending that the district court abused its discretion by denying him a continuance to permit his newly retained counsel to prepare for trial.

Our scope of review is the correction of errors at law. Iowa R. App. P. 4. We will interfere with the action of the trial court in passing on a motion for continuance only where there has been a clear abuse of judicial discretion and injustice thereby is done to the defendant. State v. Kyle, 271 N.W.2d 689, 691 (Iowa 1978).

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Rules 182-184 of the Iowa Rules of Civil Procedure address motions for continuance. Motions for continuance are to be filed without delay after the grounds for the continuance become known. Iowa R. Civ. P. 182(a). A continuance may be granted for any cause not growing out of the fault or negligence of the applicant which satisfies the court that substantial justice will be more nearly obtained by the granting of the continuance. Iowa R. Civ. P. 183(a). The movant has the obligation to show what diligent efforts have been made to obtain the absent witness or testimony. Iowa R. Civ. P. 183(b)(2). In our analysis of whether or not the court abused its discretion, we must ask if there was an erroneous conclusion and judgment, clearly against logic and effect of facts and circumstances before the court, or the reasonable, probable and actual deductions to be drawn therefrom. State v. Morrison, 323 N.W.2d 254, 256 (Iowa 1982).

In view of the facts and circumstances of this case, we cannot conclude the court abused its discretion in denying the continuance. Plaintiff's efforts to obtain counsel were sporadic at best and do not reveal a diligent effort to obtain legal representation. Plaintiff knew either as of May or July 1985 that he did not have counsel and yet the motion for a continuance was not made until the day of trial. Even after the trial notice was sent to plaintiff in September 1985, plaintiff did not get in touch with an attorney until approximately January 4, 1986—three days before trial. Plaintiff did not make his motion for a continuance until the day of trial. The failure to secure legal counsel in a reasonable period of time could quite understandably be viewed by the trial court as due to the fault or negligence of the plaintiff. See In re Estate of Tomin, 260 Iowa 1129, 1136, 152 N.W.2d 286, 290 (1967). The failure to file a motion for a continuance until the day of trial in these circumstances could also provide a reasonable ground for denial of the continuance.

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See State v. One Certain Automobile, 237 Iowa 1024, 1027, 23 N.W.2d 847, 849 (1946). We find no abuse of discretion in the court's denial of the plaintiff's motion for a continuance.

Defendants contend that even though trial date was set for January 7, 1986, the plaintiff's case was automatically dismissed under Iowa Rule of Civil Procedure 215.1. Since no motion to continue under 215.1 was made prior to January 1, 1986, as required for a continuance to be granted under 215.1, and lacking an application for reinstatement, defendant would have us agree that a dismissal as of January 1 was automatic and therefore the court lost jurisdiction after this date. We disagree with this assertion. The court administrator informed the plaintiff that the trial date was to be January 7, 1986. Parties should be able to rely on court administrators to notify them of valid trial dates. See Gold Crown Properties, 375 N.W.2d 692, 696 (Iowa 1985). After a trial date is set, parties must then appear on the trial date and be prepared for trial. In this case, plaintiff was entitled to rely on the court's setting of a trial date; the plaintiff's failure was to not be prepared for the trial.

Under Iowa Rule of Civil Procedure 230(c), a default may be entered when a party withdraws his appearance or fails to present himself for trial. The question of allowing default is largely within the discretion of the trial court. Severson v. Sueppel, 260 Iowa 1169, 1177, 152 N.W.2d 281, 286 (1967). Subsequent to its denial of plaintiff's motion for a continuance and after plaintiff had declared his intention not to participate in the trial, the court acted within its discretion in granting a default judgment.

In light of the foregoing, we affirm the trial court's denial of plaintiff's request for a continuance and the granting of the motion for a default judgment.

AFFIRMED.