

IN THE COURT OF APPEALS OF IOWA

No. 1999-75 (9-262) / 98-1058

Filed July 23, 1999

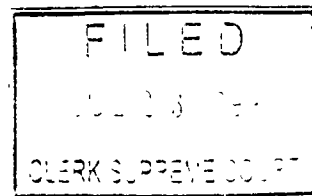
MARY ZAPPIA and DOMINICK ZAPPIA,

Petitioners-Appellants,

vs.

**CHICAGO CENTRAL AND PACIFIC RAILROAD
COMPANY and HARRISON COUNTY, IOWA,**

Defendants-Appellees.



Appeal from the Iowa District Court for Cass County, G. C. Abel, Judge.

Petitioners appeal from the rule 215.1 dismissal of their personal injury action.

AFFIRMED.

Robert Kohorst and William T. Early of the Kohorst Law Firm, Harlan, for appellants.

Edward J. Krug of Krug & Beckelman, P.L.C., Cedar Rapids, for appellee Chicago Central.

Jacob Peters of the Peters Law Firm, Council Bluffs, for appellee Harrison County.

Heard by Sackett, C.J., and Mahan and Zimmer, JJ.

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SACKETT, C.J.

This case was dismissed by the district court under Iowa Rule of Civil Procedure 215.1. Plaintiffs-appellants Mary Zappia and Dominick Zappia sought relief from the dismissal, which was denied by the district court. Plaintiffs appeal contending they were entitled to mandatory or discretionary reinstatement. We affirm.

Plaintiffs sued defendants on February 10, 1995, for injuries sustained after the automobile Mary Zappia was driving collided with a train. Trial was set for June 10, 1997, but it was continued to September 3, 1997. On August 27, 1997, the district court allowed plaintiffs' attorney to withdraw and continued the case. In addition, the order provided:

Plaintiffs shall be given 60 days from the filing of this Order within which to obtain new counsel to represent them in this case.

Within 20 days after Plaintiffs' new counsel files his or her Appearance in this case, Plaintiffs' new counsel shall be required to consult with Defense Counsel and the Court Administrator's Office in order to enter into a new Order setting this matter for a new trial date.

This case is currently on the 215.1 list, which means it is subject to automatic dismissal as of January 1, 1998. Therefore, Plaintiffs' new counsel will be required to file the appropriate Motion in order to have the case continued past January 1, 1998, pursuant to Iowa Rule of Civil Procedure § 215.1. Further, the Clerk of Court will be directed to provide a copy of this Order to Plaintiffs at their mailing address which is R.R. 2, Box 115, Missouri Valley, Iowa 51555.

Plaintiffs have not denied receiving a copy of this order.

On October 23, 1997, plaintiffs' current counsel entered an appearance. Nothing further happened until December 26, 1997, when current counsel moved for

relief from dismissal under Iowa Rule of Civil Procedure 215.1. In the motion, current counsel stated neither plaintiffs nor their prior counsel told him a new trial date had to be set within eighty days of August 27, 1997, and no copy of the August 27, 1997 order was provided to him by plaintiffs' prior attorney. Plaintiffs asked for an immediate hearing and reinstatement.

On December 29, 1997, the district court set a hearing on the motion for January 12, 1998, and found the matter should not be dismissed January 1, 1998. All defendants resisted plaintiffs' motion for relief from dismissal.

The district court, after hearing, found plaintiffs failed to show timely reasons for dismissal under rule 215.1 and ordered the case dismissed at plaintiffs' cost.

Plaintiffs contend their claims are supported by the fact their current counsel failed to receive the August 27, 1997 order. We need not address this issue as the only conclusion we can reach is plaintiffs, themselves, received a copy of the order.

Plaintiffs contend the matter should have been continued. In reviewing the dismissal of a case based on a refusal to reinstate under Iowa Rule of Civil Procedure 215.1, we review for correction of errors at law. *Tiffany v. Brenton State Bank*, 508 N.W.2d 87, 90 (Iowa App. 1993). We review a district court's decision not to reinstate a case properly dismissed under Iowa Rule of Civil Procedure 215.1 for an abuse of discretion. *Sanchez v. Kilts*, 459 N.W.2d 646, 650 (Iowa App. 1990).

To establish the right to reinstatement, plaintiffs must demonstrate both (1) oversight, mistake, or other reasonable cause, and (2) the exercise of reasonable

diligence. *See Sladek v. G&M Midwest Floor Cleaning, Inc.*, 403 N.W.2d 774, 778 (Iowa 1987). The burden to establish the right to reinstatement is on plaintiffs. *Id.* The record does not support reinstatement under either ground.

We affirm.

AFFIRMED.