IN THE COURT OF APPEALS OF IOWA

IONEER HI-BRED INTERNATIONAL, IC.,	)	
	)	
Plaintiff-Appellee,	)	Filed March 31, 1986
vs	)	
TEVE SEBERG,	)	5-678 / 85-973
Defendant-Appellant	)	

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Appeal from the Iowa District Court for Henry County (No. CL353-0282) - John C Miller, Judge

Defendant appeals judgment for plaintiff in an action for breach of contract, asserting that adequate grounds for reinstatement were not shown following dismissal pursuant to Iowa R Civ P 215 1 **AFFIRMED.**

Robert J Todd and Philip J Mahoney of Edward W. Dailey Law Firm, Burlington, for defendant-appellant

Michael C Vance of Vance Law Offices, Mount Pleasant, for plaintiff-appellee

Considered by Donielson, P J , and Snell and Schlegel, JJ.

PER CURIAM

On February 4, 1982, plaintiff Pioneer Hi-Bred International, Inc. (hereinafter Pioneer) filed the underlying action against defendant Steve Seberg for damages resulting from Seberg's breach of a contract for the sale of seed corn. On August 5, 1983, the clerk of court served the parties with a try-or-dismiss notice pursuant to Iowa R. Civ. P. 215.1. This notice informed them that if the case was not tried by January 1, 1984, it would be dismissed unless continued as provided by Rule 215.1. On September 26, 1983, Pioneer filed its certificate of readiness for trial.

On November 7, 1983, after pretrial conference, the district court continued the cause of action "into the year 1984 and until December 30, 1984, subject to a schedule for the trial of the case being made available to the parties by the court administrator." Trial was originally set by the court administrator for April 18, 1984. On April 9, 1984, Seberg filed an application for continuance. The trial court granted the continuance because the parties were unable to complete discovery depositions due to travel problems despite good faith efforts. The court ordered the case rescheduled after the parties' completed depositions.

On October 23, 1984, the court administrator set a trial date for January 29, 1985. On January 28, 1985, due to illness of Pioneer's attorney, the cause was again continued "to the first possible date scheduled by the Court Administrator." Trial was finally held on May 29, 1985.

Prior to trial, on defendant's motion, the trial court found that the case had been automatically dismissed on January 1, 1985, by Rule 215.1. At this point Pioneer's counsel made an oral motion for reinstatement arguing that he had relied on the rescheduling into January of 1985 by the court administrator. The court sustained Pioneer's motion for reinstatement stating as follows:

> It appears to me that [after November of 1983] the case had at all times been actively pursued. Interrogatories have been propounded and answered, depositions have been taken, trial dates have been set and continued, and it appears this is not one of those files or cases that we would characterize as being a case that has simply been ignored or a case in which there was a lack of diligence. It appears to me that the fact that the matter was not formally continued into 1985 for trial within 1985 was inadvertent and in reliance, at least in part, upon the Court Administrator's October 23, 1984 Notice scheduling trial for January 29, 1985.
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> I understand from the comments of counsel, Mr. Vance's statement, it wasn't tried on that date because of an illness of his that prevented trial. Again, it looks to me like it is a matter that the parties have pursued diligently and always intended to try.
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> The Motion for Reinstatement is timely coming within the first six months of calendar year 1985, and the Court finds and concludes that the Motion for Reinstatement should be sustained. Accordingly, the objection or resistance to the Motion is overruled, the Motion for Reinstatement is sustained, and the matter will proceed to trial.

The case was tried and resulted in a judgment against Seberg for $16,513.65 plus interest at the rate of 10% per annum after February 24, 1982.

On appeal, Seberg asserts that the case was automatically dismissed on January 1, 1984, and adequate grounds for reinstatement were not demonstrated. Pioneer counters that sufficient grounds for reinstatement exist or, in the alternative, no automatic dismissal under Rule 215.1 occurred because the Court Administrator rescheduled the trial date after December 31, 1984.

Iowa R. Civ. P. 215.1 provides in pertinent part:

> It is the declared policy that in the exercise of reasonable diligence every civil and special action, except under unusual circumstances, shall be brought to issue and tried within one year from the date it is filed and docketed and in most instances within a shorter time.
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> All cases at law or in equity where the petition has been filed more than one year prior to July 15 of any year shall be for trial at any time prior to January 1 of the next succeeding year. The clerk shall prior to

> August 15 of each year give notice to counsel of record as provided in R.C.P. 82 of:
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> (a) the docket number,
>
> (b) the names of parties,
>
> (c) counsel appearing,
>
> (d) date of filing petition,
>
> and the notice shall state that such case will be for trial and subject to dismissal if not tried prior to January 1 of the next succeeding year pursuant to this rule. All such cases shall be assigned and tried or dismissed without prejudice at plaintiff's costs unless satisfactory reasons for want of prosecution or grounds for continuance be shown by application and ruling thereon after notice and not ex parte. . . .
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> No continuance under this rule shall be by stipulation of parties alone but must be by order of court. Where appropriate the order of continuance shall be to a date certain.
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> The trial court may, in its discretion, and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, reinstate the action or actions so dismissed. Application for such reinstatement, setting forth the grounds therefor, shall be filed within six months from the date of dismissal.

The purpose of rule 215.1 is well established. "It is to clear the docket of dead cases and to assure timely and diligent prosecution of those cases which should be brought to a conclusion." Brown v. Iowa District Court for Polk Cty, 272 N W 2d 457, 458 (Iowa 1978). "Rule 215.1 is designed, worded and interpreted to discourage dilatory tactics. Its declared policy is to require reasonable diligence Its purpose is to clear our court dockets of dead wood and trial assignments of stale cases acting as barnacles to good procedure." Kutrules v. Suchomel, 258 Iowa 1206, 1212, 141 N.W.2d 593, 597 (1966).

We believe that this case is controlled by Kutrules and the recent case of Gold Crown Properties v. Iowa Dist. Court, 375 N.W.2d 692 (Iowa 1985). In Kutrules, the Iowa Supreme Court recognized that there might be situations where, through no fault of the plaintiff, the case cannot be tried before the term ends to which it is specifically assigned and where the court might retain jurisdiction of the matter by renewing the assignment in the following term without violating either the spirit or the letter of Rule 215.1. In that case, the petition was filed in June of 1963. A notice to try or dismiss was sent to the parties on August 15, 1964, informing them that the case would be dismissed if not tried before the end of the October 1964 term. On October 1, 1964, plaintiff filed a Certificate of Readiness for trial. Sometime thereafter, the trial court continued the case until the January 1965 term. The case was never assigned for trial and the January term ended with the convening of the April term on April 5, 1965. On the first day of the April term, the trial court set the case for trial on June 21, 1965. The defendant moved to dismiss the action pursuant to Rule 215.1 and the trial court sustained the motion. On appeal, the supreme court reversed by reasoning:

> We have never said that a case should be dismissed for lack of prosecution while on the active trial assignment, assigned for trial on a date certain and before the arrival of the trial date. Such a ruling would be arbitrary and beyond the realm of sound discretion.
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> * * *
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> Plaintiff had filed two Certificates of Readiness and had asked for trial. The case was at issue. Plaintiff's counsel had done everything he could do except ask for continuance and continuance was not what he wanted. He wanted a trial. We can only conclude that the case was not tried during the January term because it was not reached in its regular order. Rule 215.1 was never intended nor does it require dismissal of cases that are at issue, ready for trial and while plaintiff is affirmatively asking for trial.

Kutrules, 258 Iowa at 1213-14, 141 N.W.2d at 598.

Similarly, in Gold Crown, the petition was filed in April of 1981. On July 15, 1982, a try-or-dismiss notice was served upon the parties stating that the case would be dismissed if not tried by January 1, 1983. On August 27, 1982, plaintiff filed a Certificate of Readiness for trial. On October 22, 1982, the case was continued until March 22, 1983. At the end of February, due to the number of motions filed in the case, the complexity of litigation, and the court's case load, the court continued the case until June 28, 1983. The district court administrator on March 30, 1983 then rescheduled the trial to July 19, 1983, due to an overloaded trial schedule and motions still under submission. The defendant asserted that the cause of action was automatically dismissed under rule 215.1 when it was not tried on the first assigned trial date or, in the alternative, that it was automatically dismissed when it was not tried on June 28, 1983. The Iowa Supreme Court rejected the defendant's contentions, observing that "Rule 215.1 was intended to be a shield, not a sword. It was not designed as a technicality to trap a diligent party and prevent him from having a day in court." Gold Crown, 375 N.W.2d at 698 (quoting Baty v. City of West Des Moines, 259 Iowa 1017, 1026, 147 N.W.2d 204, 210 (1966)).

In the present case, we can only conclude that the case was not tried in 1984 because the court's trial schedule would not allow it to be so docketed. Pioneer had indicated readiness for trial as early as September of 1983. Discovery was actively pursued by the parties, trial dates were set, and continued. Upon Seberg's application in April of 1984, a continuance was granted, the trial date of April 18, 1984 was removed, and the parties were ordered to notify the court administrator upon completion of depositions for rescheduling of the trial. When the court administrator scheduled the trial for January 29, 1985 to accommodate the court's trial schedule, neither party lodged an objection.

In the eighth judicial district, the duty to coordinate the trial docket and schedule cases for trial has been delegated to the court administrator. This delegation has been endorsed by the Iowa Supreme Court and is necessary under modern court administration. The orders of the court administrator setting trial dates were appropriately made in conformity with the court's orders moving the case to disposition by trial.

The purpose of rule 215.1 would clearly not be served here where there is no indication of dilatory tactics nor anything less than reasonable diligence in prosecution. Given the fact that this case was assigned for trial on a date certain when the try-or-dismiss term ended, and our strong policy to allow trials on the merits when prosecutions have been diligently pursued, we conclude that rule 215.1 did not trigger an automatic dismissal of Pioneer's action on January 1, 1985. Therefore, the case was properly tried and the resulting judgment against Seberg is affirmed.

AFFIRMED.