FILED
AUG 26 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

PAULINE DAUNER,	)	
Plaintiff-Appellant,	)	Filed August 26, 1987
vs.	)	71
CITY OF DUBUQUE, IOWA; PETE S. SFIKAS and BESSIE SFIKAS d/b/a SFIKAS RESTAURANT; CANFIELD HOTEL, INC.,	)	7-187 86-1574
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Dubuque County (44128), L.D. Lybbert, Judge.

Plaintiff appeals an order dismissing her negligence action, asserting that a stay order entered by the district court should have been given the effect of removing the case from the operation of Iowa Rule of Civil Procedure 215.1.

REVERSED.

John J. Carlin of Carlin, Hellstrom & Bittner, Davenport; and Richard J Wells of Wells, McNally & Bowman, Davenport; for plaintiff-appellant.

Barry A. Lindahl, City Solicitor, Dubuque, for defendant-appellee city.

Richard M. McMahon and Therese M. Botts of Betty, Neuman & McMahon, Davenport, for defendants-appellees Sfikas.

Patrick M. Roby and William L. Roby of Shuttleworth & Ingersoll, Cedar Rapids, for defendant-appellee hotel.

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

SCHLEGEL, J.

An action brought by plaintiff Pauline Dauner against the defendants, City of Dubuque, Pete and Bessie Sfikas, and the Canfield Hotel, Inc., was dismissed under Iowa Rule of Civil Procedure 215.1. The plaintiff appeals the district court's ruling that the case was automatically dismissed by operation of rule 215.1, asserting that a stay order entered by the trial court should have been given the effect of removing the case from the operation of rule 215.1. We reverse.

This suit was originally filed in April 1983. It sought to recover damages from defendants for injuries allegedly sustained when plaintiff tripped and fell on a public sidewalk. On August 10, 1984, notice was mailed to all of the parties by the clerk of the district court under rule 215.1 stating that the case was subject to dismissal if not tried before January 1, 1985. In relevant part Iowa Rule of Civil Procedure 215.1 provides:

> 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 . . . 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. . . .
>
> 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.
>
> 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.

On December 20, 1984, counsel for plaintiff filed an application to remove the case from the "strike list" (presumably, "strike list" refers to those cases

subject to dismissal under the rule). The application was granted and the case relieved from the provisions of rule 215.1 until December 31, 1985. On August 15, 1985, the clerk mailed another rule 215.1 notice to all parties. On October 10, 1985, defendant Canfield Hotel applied for a stay of proceedings due to liquidation proceedings involving its insurer. In response to the stay application, the court entered an order on October 15, 1985 setting the stay application for hearing. The order stated that at the hearing "the Court shall . . . consider the effect of such stay, if any, upon the applicability of R.C.P. 215.1." Plaintiff filed a trial certificate on October 21, 1985. On October 30, 1985, the district court entered an order granting the stay stating ". . . it is hereby ordered that further proceedings in the above-entitled cause are Stayed for a period of 90 days from the date of this Order without prejudice, however, to the right reserved in the Court to consider any application for relief from R.C.P. 215.1." On March 5, 1986, the trial judge entered an order noting that the stay period had expired and was to be extended for 30 days to allow the rehabilitator to show what additional time would be necessary for defendant Canfield Hotel to obtain proper representation. Plaintiff filed a trial certificate on September 3, 1986, which the defendants resisted on the ground that the case had been automatically dismissed under rule 215.1 on January 1, 1986. This appeal followed.

The issue on appeal is whether a stay order entered by the district court had the effect of removing the case from the operation of Iowa Rule of Civil Procedure 215.1. Plaintiff argues that because relief from rule 215.1 had been previously secured by removing the case from the "strike list" until December 1985 and the case was placed under a stay order, no further action was required to remove the case from the operation of rule 215.1. The defendants, however, contend that because the stay order reserved in the district court the right to consider any application for relief from rule 215.1 and plaintiff

failed to take steps to obtain a continuance, the case was automatically dismissed on January 1, 1986.

The Iowa Supreme Court, in Allied Gas and Chem. Co., Inc. v. Federated Mut. Ins. Co., 365 N.W.2d 26 (Iowa 1985), addressed the issue of the effect of a stay order on rule 215.1. In that case, the court held, among other things, that where all proceedings in the trial court had been stayed under Iowa Rule of Appellate Procedure 2(b) pending a ruling by the supreme court on an application for interlocutory appeal, the case was not subject to dismissal under rule 215.1. Id. at 30. Similarly, the stay order in the present case should serve to prevent the case from being automatically dismissed. The Iowa Supreme Court, in Hanna v. State of Iowa Liquor Control Comm'n, 179 N.W.2d 374, 376 (Iowa 1970), expressed the purpose of a stay:

> A stay order does not affect the merits of the controversy and is to maintain the status quo until a determination can be made on the merits. It is intended only to delay the enforcement of the action stayed, not render it ineffective.

Dismissing the case under rule 215.1 would violate this basic purpose of a stay order by not maintaining the status quo of the case until it can be adjudicated on the merits.

Rule 215.1 was designed to remove dead cases from the docket and assure the timely and diligent prosecution of cases. Brown v. Iowa District Court for Polk County, 272 N.W.2d 457, 458 (Iowa 1978). It is not the purpose of rule 215.1, however, to act as a technical pitfall for parties that have made diligent efforts to bring a case to trial:

> 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.

Baty v. City of West Des Moines, 147 N.W.2d 204, 211 (Iowa 1966).

In the present case, rule 215.1 does not operate to dismiss the case where the proceedings were placed under a stay order. Such a dismissal would serve only to "trap" the plaintiff despite her reasonably diligent efforts to bring the case to trial. Subsequent to receipt of the initial "try or dismiss" notice, plaintiff applied for and received a continuance in order to implead the defendant Canfield Hotel after discovery showed the necessity of doing so. Plaintiff completed discovery and was ready to go to trial prior to the automatic dismissal date, as evidenced by its trial certificate filed October 21, 1985. But for the stay order, plaintiff presumably would have tried the case before the dismissal deadline. Thus, plaintiff was diligent in attempting to bring the case to trial. Therefore, this case was not the type of "dead" case which rule 215.1 intended to clear from the docket.

Not only did counsel for plaintiff interpret the stay order as removing the case from the operation of rule 215.1, but the district court judge who entered the stay order apparently did as well as evidenced by the fact that he extended the stay 30 days beyond its original expiration date. Had he interpreted the case to have been automatically dismissed by rule 215.1 as of January 1, 1986, he would have found it unnecessary to further extend the stay. It was reasonable for plaintiff's counsel to believe that no further action was needed to keep the case alive. Accordingly, plaintiff's counsel had no reason to believe that there was a need to apply for reinstatement within six months of the January 1, 1986 "try or dismiss" deadline as provided for in rule 215.1.

We believe that the stay order removed the case from the operation of rule 215.1 and therefore, find that the district court's order dismissing plaintiff's case should be reversed.

REVERSED.