

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 28 1985

CLERK SUPREME COURT

GOLD CROWN PROPERTIES, INC.,)

Plaintiff,)

vs.)

Filed May 28, 1985

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THE HONORABLE KEITH E. BURGETT,)

Judge of the Iowa District Court for
Pottawattamie County at Council Bluffs,)

5-19
84-165

Defendant.)

Writ of certiorari to Pottawattamie District Court - Keith E. Burgett,
Judge.

Defendant in an underlying tort action (plaintiff herein) challenges via
certiorari the order overruling its motion for formal order of dismissal pursuant to
Iowa Rule of Civil Procedure 215.1. WRIT ANNULLED.

John M. French and John D. Sens of Stuart, Tinley, Peters, Thorn, Smits &
Sens, Council Bluffs, Iowa, for plaintiff.

Lyle A. Rodenburg, Council Bluffs, Iowa, for plaintiff in underlying tort
action.

Considered by Oxberger, C.J., Schlegel, and Hayden, JJ.

SCHLEGEL, J.

Defendant in an underlying tort action (plaintiff herein) challenges via certiorari the order overruling its motion for formal order of dismissal pursuant to Iowa Rule of Civil Procedure 215.1.

Donna Rodenburg, hereafter referred to as "plaintiff," brought suit on April 28, 1981, against defendant Gold Crown Properties, Inc., and two other defendants alleging that she had been the victim of sexual abuse at an apartment complex owned by Gold Crown for which the defendants were liable. On July 15, 1982, the clerk of court for Pottawattamie County served notice pursuant to Iowa Rule of Civil Procedure 215.1 that the case was subject to dismissal unless tried or continued prior to January 1, 1983.

Plaintiff filed its trial certificate on August 27, 1982. On October 22, 1982, pursuant to a stipulation of the parties, Judge Burgett granted a motion for continuance and set the case for trial on March 22, 1983. A pretrial order was entered on October 26, 1982, which confirmed the trial date and provided that the case should not be dismissed because it was being prepared for trial on the date set.

Early in 1983 a number of motions were filed including motions for summary judgment by the other two defendants. A hearing was held before Judge Irvin on February 28, 1983, on all pending motions. On March 3 Gold Crown filed a motion for summary judgment. Judge Irvin issued a ruling on March 4 which provided in part:

All three of the Defendants have filed Motions for Summary Judgment involving somewhat complex legal issues. The Plaintiff has designated experts subsequent to the deadline therefor; some of the Defendants were tardy in answering interrogatories, and, although within the time limits of the Pre-trial Order, some Defendants have sought to amend their Answers. For these reasons the Court on its own motion will continue the trial of this matter.

The court ordered that the trial be continued until June 28, 1983. Several of the motions were disposed of and the motions for summary judgment were taken under advisement.

On March 30, 1983, the court administrator changed the trial date to July 19, 1983, to accommodate the court's trial schedule. The case was not tried on that date apparently because one or both parties informed the district court that the matter had been settled. On July 28, 1983, plaintiff filed a motion for a hearing on the settlement proceedings. The hearing was held on September 20 before Judge Hanson who entered an order stating that the case had not been settled, should not be dismissed under rule 215.1 but should be continued to the date set by the court administrator. The court administrator scheduled the case for trial on March 13, 1984.

On December 16, 1983, Gold Crown filed its motion for formal order dismissing the case on the ground that rule 215.1 was applicable. This motion was overruled by Judge Burgett on January 17, 1984. Gold Crown filed its petition for writ of certiorari on January 30, 1984.

In its petition defendant disputes the conclusions of Judge Burgett which were: (1) that the case was under submission to the court on March 22, 1983, when motions for summary judgment were pending and, thus, was outside the scope of rule 215.1; (2) that a constructive application for continuance was made on March 4, 1983, when the trial court declared its intention to continue the case without objection by the parties; (3) that the language of a prior joint application for continuance in October of 1982 constituted a stipulation to future continuances as well; (4) that if the case was automatically dismissed the order of Judge Hanson on September 20, 1983, operated as a reinstatement; (5) that pretrial orders entered pursuant to Iowa Rules of Civil Procedure 136 and 138 suspended the operation of rule 215.1; (6) that the application of rule 215.1 in the present case is unconstitutional; and (7) that defendant is estopped from claiming dismissal in

view of its subsequent participation in further proceedings before the trial court. Plaintiff urges that each of the above propositions is correct and also argues that the petition for certiorari should be dismissed because it was untimely filed. We address the latter argument first since it is jurisdictional.

I. Timeliness of the Petition. A writ of certiorari is proper where the trial court has acted illegally or otherwise exceeded its jurisdiction. Iowa R. Civ. P. 306. The petition must be filed within thirty days from the time the trial court allegedly exceeded its jurisdiction. Iowa R. Civ. P. 319. We hold that the petition in this case was timely filed. Although defendant argues that the case was automatically dismissed by operation of the rule either on March 22, June 28, or July 19 of 1983, the action of the district court which the petition challenges was the January 17, 1984, ruling refusing defendant's request for a formal order of dismissal. The petition for writ of certiorari was filed on January 30, 1984, and was timely.

II. Rule 215.1 Dismissal. Iowa Rule of Civil Procedure 215.1 provides that where a civil case has been on file more than one year prior to July 15, the clerk shall send a notice prior to August 15 that the case is subject to dismissal if not tried prior to January 1 of the next year. The rule further provides:

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.

Once the proper notice is given by the clerk the rule becomes effective and dismissal is automatic if the case is not tried or continued. Brown v. Iowa District Court for Polk County, 272 N.W.2d 457, 459 (Iowa 1978). If the case is continued it is not removed from the operation of the rule except that the trial date is changed. "In all other respects the rule remains operative If the order continuing the case is not complied with, the case stands dismissed." Id. at 458.

Much of the controversy in this case centers around the March 4, 1983, order of Judge Irvin continuing the case from March 22 until June 28. We agree with Judge Burgett that there was substantial compliance with the rule at that time. It would be exalting form over substance to force plaintiff to apply for a continuance after the court has already announced sua sponte its intention to continue the case and both parties have had notice and an opportunity to object. Similarly, the change of the trial date from June 28 to July 19 by the court administrator can be considered acceptable under the supreme court's decision in Kutrules v. Suchomel, 258 Iowa 1206, 1212-14, 141 N.W.2d 593, 597-98 (1966). However, the July 19 trial date passed without the case being tried, and without a continuance being granted or a new trial date set. At this point the case was automatically dismissed under rule 215.1.

In the Brown case after notice was given by the clerk, as required by 215.1, the case was continued three separate times to a designated date by court order. Brown, 272 N.W.2d at 458. On the last date fixed for trial, June 28, 1976, it was not tried nor any further continuance requested or granted. The supreme court held that the case was dismissed on June 28 even though the formal order of dismissal was not entered until January 3, 1977. Id. at 459. The court also rejected the argument that the case could not be dismissed on the last trial date because a motion for summary judgment was pending on that date. Id. at 458.

The present case is very similar to Brown and was dismissed when the last date set for trial passed without a continuance being requested or granted.

III. Reinstatement. The automatic dismissal on July 19, 1983, does not require us to sustain the writ because we hold that Judge Burgett's order effectively reinstated the action.

The failure of Judge Burgett to specifically rule that he was reinstating the action against Gold Crown does not prevent this court from treating the order as a reinstatement. Even when the trial court bases its ruling on a different ground, we will uphold the ruling if any proper ground appears in the record. Fankell v. Schober, 350 N.W.2d 219, 223 (Iowa Ct. App. 1984); Hastings v. Espinosa, 340 N.W.2d 603, 608 (Iowa Ct. App. 1983).

The record does show proper grounds for reinstating plaintiff's action. In December of 1981, plaintiff filed both a resistance to Gold Crown's motion for formal dismissal and a motion for continuance. Those filings show that plaintiff, in substance, was trying to preserve her case for trial. That goal is essentially the same goal that an application for reinstatement under rule 215.1 is designed to achieve. Because the goal is the same, we hold that Judge Burgett could have looked to the substance of plaintiff's filings and properly treated them as an application for reinstatement. The trial court's authority to look at the substance of a motion rather than the motion's title is well established in case law. Peoples Trust & Savings Bank v. Baird, 346 N.W.2d 1, 2 (Iowa 1984) (motion for rehearing properly considered a motion under Iowa R. Civ. P. 179(b)); State v. Wilt, 333 N.W.2d 457, 460 (Iowa 1983) (motion to dismiss properly treated as application for adjudication of law points); E & M Machine Tool Corp. v. Continental Machine Products, Inc., 316 N.W.2d 900, 903-04 (Iowa 1982) (motion to quash properly treated as objection to request for discovery); Matter of Estate of Dull, 303 N.W.2d 402, 404-05 (Iowa 1981) (motion for new trial properly considered motion under Iowa R. Civ. P. 179(b)); Kagin's Numismatic Auctions, Inc. v. Criswell, 284 N.W.2d 224, 226 (Iowa 1979) (motion to reconsider properly treated as motion under Iowa R. Civ. P. 179(b)).

Of course, Judge Burgett could not have reinstated the case unless the other criteria for reinstatement had been met. See, e.g., Psotka v. Brockney, 260 N.W.2d 413, 414 (Iowa 1977) (reinstatement invalid when application for reinstatement not filed within 6 months of dismissal). The record shows that the other criteria were met in this case. The two requests that constituted application for reinstatement were filed. Both were filed within six months of the automatic dismissal. Grounds for reinstatement could be found in plaintiff's resistance to Gold Crown's motion for formal dismissal. In addition, a hearing was held and both parties were able to present their arguments. We therefore conclude that plaintiff substantially complied with the rule 215.1 procedure for reinstatement of a case that has been dismissed.¹ See Vinson v. Linn-Mar Community School District, 360 N.W.2d 108, 115 (Iowa 1984) (two continuance orders—one not a rule 215.1 continuance—read together substantially complied with rule 215.1).

We need not rule whether plaintiff was entitled to mandatory reinstatement because of the breakdown of settlement negotiations. Rather, it is obvious from Judge Burgett's ruling that he would have used his discretionary power to reinstate the case if reinstatement was not mandatory. His findings of fact show that the case was vigorously pursued in pleading, discovery, and motions. He found that the attorneys were very active in the preparation of the case for trial. On the basis of those findings, we cannot say that reinstatement would be an abuse of discretion.

Although there is no direct precedent for this holding, it is not in any way inconsistent with the purpose of rule 215.1. "Rule 215.1 is designed, worded and interpreted to discourage dilatory tactics." Kutrules v. Suchomel, 258 Iowa 1206,

¹ We cannot uphold the ruling that Judge Hanson's calendar entry reinstated the case. The record does not show that plaintiff substantially complied with rule 215.1 at that time.

1212, 141 N.W.2d 593, 597 (1966) (emphasis added). See also Baty v. City of West Des Moines, 259 Iowa at 1022-23, 147 N.W.2d at 208 (1966) (purpose and object of rule "to discourage dilatory tactics and require 'reasonable diligence' to see that court actions are brought to trial promptly . . ."). "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, 259 Iowa at 1026, 147 N.W.2d at 210, quoted in Glenn v. Farmland Foods, Inc., 344 N.W.2d 240, 243 (Iowa 1984).

The record in this case does not show any dilatory tactics on plaintiff's part. Judge Burgett found that the attorneys for the parties had been diligent. Plaintiff tried to protect her case from dismissal.

If we sustain the writ of certiorari, it is only because plaintiff did not, in abundance of caution, file a formally titled application for reinstatement. That failure should not prevent reinstatement, however, because plaintiff was diligently seeking a trial assignment. Cf. Rath v. Sholty, 199 N.W.2d 333, 337 (Iowa 1972) (failure to move for continuance did not prevent reinstatement when counsel was diligently seeking trial assignment and not a continuance); Kutrules v. Suchomel, 258 Iowa at 1214, 141 N.W.2d at 598 (failure to move for continuance did not result in dismissal when plaintiff wanted trial—not continuance—and trial was set but case was not tried because of court scheduling problems).

The issue presented in this certiorari action is whether Judge Burgett exceeded his proper jurisdiction or otherwise acted illegally. See Iowa R. Civ. P. 306. As the discussion above shows, reinstatement was within Judge Burgett's proper jurisdiction. The writ should therefore be annulled.

WRIT ANNULLED.

Oxberger, C.J., concurs; Hayden, J., dissents.

HAYDEN, J. (dissenting)

I respectfully dissent from Division III of the majority opinion. Rule 215.1 provides that an application for reinstatement must be filed within six months of the date of the dismissal of the case. If no application for reinstatement is timely filed the court is without any authority to reinstate the case, even if it is a case which deserves reinstatement because it was prosecuted in a "timely, diligent fashion." Koss v. City of Cedar Rapids, 300 N.W.2d 153, 155-57 (Iowa 1981). I do not agree with the majority's holding that plaintiff's resistance to the motion for formal dismissal or plaintiff's motion for continuance was in effect a motion for reinstatement. Nor do I consider Judge Burgett's ruling that the case was not dismissed on March 22, 1983, to be an acceptable substitute for a ruling on a motion for reinstatement after considering the appropriate grounds for reinstatement specified in rule 215.1. The supreme court has consistently been strict in its construction of the rule and has stated that the benefits of strict construction to judicial economy outweigh the occasional loss of a meritorious suit. Greene v. Tri-County Community School District, 315 N.W.2d 779, 781 (Iowa 1982). I would sustain the writ.