FILED
MAY 22 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

27

DEBRA S. BROWN and ALLEN B. BROWN,

Plaintiffs-Appellees,

vs.

JOHN P. BACOT and BACOT, INC.,

Defendants-Appellants.

Filed May 22, 1984

4-98
83-711

Appeal from the Iowa District Court for Polk County - Theodore H. Miller, Judge.

Defendants appeal from judgment for plaintiffs in this action for defendants' wrongful eviction of plaintiffs from their apartment. AFFIRMED.

Larry J. Handley of Handley, Berry & Eisenhauer, Ankeny, for defendants-appellants.

Robert W. Powers, Des Moines, for plaintiffs-appellees.

Heard by Donielson, P.J., and Snell and Sackett, JJ.

Defendants appeal from judgment for plaintiffs in this action for defendants' wrongful eviction of plaintiffs from their apartment. Defendants allege that the trial court erred: 1) in reinstating plaintiffs' action after it had been dismissed under Iowa R. Civ. P. 215.1, and 2) in granting plaintiffs' motion for a continuance after the case had been reinstated. We affirm.

Plaintiffs had originally commenced their action seeking damages for wrongful eviction on August 25, 1978. Defendants filed an answer on September 11, 1978. On July 18, 1979, the interrogatories directed at defendants were filed and were answered on August 31, 1979. On September 26, 1979, plaintiffs filed a request for admissions; defendants allowed the matter to be deemed admitted without a response.

The clerk of district court allegedly mailed to the parties a notice under Iowa R. Civ. P. 215.1 on August 11, 1980. On January 2, 1981, the case was dismissed pursuant to that rule. On April 16, 1981, plaintiffs filed a request for production and a request for admissions. After being advised by defendants that the case had been dismissed, plaintiffs filed an application for reinstatement asserting that they had not received the rule 215.1 notice. The application was supported by an affidavit. Attached to the affidavit was a letter by plaintiffs' attorney to defense counsel requesting compliance with discovery requests and stating that with his cooperation the case could be tried in sixty days. Defendants resisted the application for reinstatement. After a hearing on the application, the court found that good cause had been shown for such reinstatement and reinstated the case.

On October 21, 1981, plaintiffs filed a request for admissions and a request for production. On November 10, 1981, defendants filed an answer to request for production and an answer to request for admissions, failing to respond to all the requests.

On December 16, 1981, plaintiffs filed a motion for a continuance. After a

hearing, the court found that the case had not been tried because of a combination of factors including delay in discovery and responses thereto, a rule 215.1 dismissal and reinstatement, settlement efforts and excusable neglect, mistake and oversight. The court concluded that there were satisfactory reasons for want of prosecution and grounds for a continuance. The court concluded that the case should not be dismissed in 1982 under rule 215.1 and assigned the case for trial on March 1, 1982.

On January 8, 1982, plaintiffs filed a motion to compel discovery of certain matters. On January 18, 1983, the trial court entered an order sustaining the motion to a limited extent. The case was subject to two more continuances, one at defendants' request. The case was tried before a jury in August, 1982, which returned a verdict awarding damages to plaintiffs. The defendants filed motions for judgment notwithstanding the verdict and for new trial which were overruled on April 14, 1983. This appeal followed.

I.

We first consider defendants' claim that the court erred in reinstating this action. Reinstatement of actions dismissed under rule 215.1 is provided for in the same rule: "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." The court has considerable discretion in reinstating dismissed cases, but reinstatement is mandatory upon a showing of oversight, mistake, and other reasonable cause. Werkmeister v. Kroneberger, 262 N.W.2d 295, 296 (Iowa 1978). We are more reluctant to interfere where a motion to reinstate has been granted than where it has been denied. Rath v. Sholty, 199 N.W.2d 333, 336 (Iowa 1972). If the court makes a finding of oversight or other reasonable cause, under which reinstatement is mandatory, such a finding is binding on this court if supported by substantial evidence. Id.

In this case, the court found good cause for reinstatement due to excusable

neglect and oversight. We believe the record contains substantial evidence to support that decision. According to affidavits submitted by plaintiffs' attorney in support of the motion to reinstate, neither he nor his office received any notice of dismissal under rule 215.1; in any event, he was unaware that the action had been dismissed as evidenced by the fact that he was pursuing discovery matters in April of 1981. In fact, the record does not contain the rule 215.1 notice of dismissal which defendants claimed in their resistance to reinstatement was sent on August 11, 1980, nor does it contain the actual dismissal entered on January 2, 1981. The only evidence of any dismissal or notice thereof are the statements in defendants' resistance to reinstatement referred to above and the statement that defendants' attorney informed plaintiffs' attorney by telephone conversation on June 5, 1981, that the case had been dismissed. Under these circumstances, the trial court could have reasonably concluded that plaintiffs did not know that the case was subject to dismissal in 1981. We find no error in the court's reinstatement of this action.

II.

Defendants also claim that the trial court erred in granting plaintiffs' motion for continuance on December 21, 1981, so as to avoid a second dismissal of the action under rule 215.1. The court has discretion to grant continuances upon timely application in order to avoid dismissal under rule 215.1. Miller v. Bonar, 337 N W.2d 523, 526 (Iowa 1983). Here, the court stated as follows in its order granting the continuance:

> 1. The case has not been tried due to a combination of factors: delay in discovery and responses thereto, a previous 215.1 dismissal and reinstatement, settlement efforts and negotiation, and excusable neglect, mistake and oversight on behalf of Plaintiff's Atty.
>
> 2. There are satisfactory reasons for want of prosecution and grounds for continuance, above stated.

We cannot say the court abused its discretion in granting plaintiffs' motion for

continuance for these reasons.

The judgment of the trial court is affirmed in all respects.

AFFIRMED.