FILED
DEC 29 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

219

RONALD D. GRABLE and SUZANNE GRABLE,	)	
Plaintiff-Appellant,	)	Filed December 29, 1982
vs.	)	
THOMAS GARTIN, M.D., and GEIGY PHARMACEUTICALS, a Division of CIBA-GEIGY Corporation,	)	2-431 2-68256
Defendants-Appellees.	)	

Appeal from Story District Court - M. D. Seiser, Judge.

Plaintiffs appeal the dismissal of their action by operation of Iowa Rule of Civil Procedure 215.1. REVERSED AND REMANDED.

Paul Moser, Jr., Des Moines, Iowa, for plaintiff-appellant.

Marvin F. Heidman and John D. Ackerman, Sioux City, Iowa, for defendants-appellees.

Chester Woodburn III, Des Moines, Iowa, for defendants-appellees.

Heard en banc.

Plaintiffs, Ronald and Suzanne Grable, appeal from the dismissal of their action by operation of Iowa Rule of Civil Procedure 215.1. They assert that the trial court erred in dismissing their action because they had not abandoned this case and had filed a timely motion for continuance. We reverse the trial court's judgment and reinstate plaintiff's action.

The injury which is the basis of plaintiffs' action occurred in 1976; their petition at law was filed in 1978. In August, 1980, this action became subject to rule 215.1 and the clerk of court, on August 15, 1980,[1] sent a try or dismiss order. The matter was then continued during the calendar year 1981. On August 22, 1981, the clerk mailed a second try or dismiss order for the year ending December 31, 1981. Plaintiffs moved for a continuance on December 15, 1981. This motion was set for hearing on February 1, 1982, at which time the trial court dismissed plaintiffs' petition on the basis of rule 215.1.

I. Scope of Review. Since this is an action at law, our review is on assigned error only. Iowa R. App. P. 4.

II. Rule 215.1 Notice. Plaintiffs assert that the trial court erred in dismissing their case under Iowa Rule of Civil Procedure 215.1. Defendants argue: 1) that the trial court did not abuse its discretion in denying plaintiffs' motion for a continuance; 2) that the trial court had no jurisdiction to rule on plaintiffs' motion for continuance after the automatic dismissal date of January 1, 1982; and 3) that this court should not entertain plaintiffs' application for an interlocutory appeal. With regard to defendants' third argument, we note that plaintiffs appeal from the dismissal of their petition. Dismissal of a petition or summary judgment may be considered a final judgment. See Steams v. Kean, 303 N.W.2d 408, 410 (Iowa 1981).

We begin our analysis of the other issues with Iowa Rule of Civil Procedure 215.1, which provides in pertinent part:

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[1] Note that the rule states "prior" to August 15, but the propriety of the 1980 notice is not before us. See Greene v. Tri-County Community School District, 315 N.W.2d 779, 782 (Iowa 1982).

> 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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> * * *
>
> 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. . . . (emphasis added).

Rule 215.1 disposes of actions on grounds other than the merits of the controversy. "Because the stakes are high, and the results harsh, the formalities prescribed to implement the rule 215.1 procedure must be strictly observed." Greene v. Tri-County Community School District, 315 N.W.2d 779, 782 (Iowa 1982). As a means of a summary disposal of an action on procedural grounds, strict compliance with the notice provision in rule 215.1 is required. See also Kiertzner v. Ehrp, 218 N.W.2d 587, 590 (Iowa 1974) (court determined that the clerk's notice mailed on August 22, 1967, regarding automatic dismissal under 215.1 on January 1, 1968, was not mailed prior to August 15 and that reinstatement was in order); Schmidt v. Abbott, 156 N.W.2d 649, 651 (clerk's notice mailed on August 17 was held defective).

The trial court in ruling on plaintiffs' motion to continue found that the clerk gave notice in August, 1981, and that the action was subject to dismissal on December 31, 1981. Specifically, the clerk's notice was filed on August 20, 1981, more than five days after the "prior to August 15" required in rule 215.1. The trial court further stated that he was ruling on plaintiffs' motion to continue just as a motion to reinstate the matter. We find trial court's ruling to be erroneous.

Here, as in Greene, "[t]here was no automatic dismissal . . . . The notice was served . . . late; it was served on, rather than before August 15. Hence, rule 215.1 never came into operation." Greene, 315 N.W.2d at 782. Accordingly, the trial court erred in dismissing plaintiffs' action.

In reversing the trial court, we urge the immediate disposition of this stale piece of litigation which has haunted the docket of Story County for too long a time.

REVERSED AND REMANDED.