

IN THE SUPREME COURT OF IOWA

No. 16-1938

Marshall County Number PCCI007550

FRANSICO VILLA MAGANA,

Applicant / Petitioner-Appellant,

vs.

STATE OF IOWA

Respondent-Appellant

APPELLANT'S PROOF BRIEF

Christopher A. Clausen
Clausen Law Office
315 6th Street
Suite 201
Ames, Iowa 50010
515-663-9515 phone
chris@cacloia.com
515-663-9517 fax

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Matter of Estate of Bearbower, 376 N.W.2d 922, 923 (Iowa Ct. App. 1985)

Tiffany v. Brenton State Bank of Jefferson, 508 N.W.2d 87, 91 (Iowa Ct. App. 1993)

Iowa R. Civ. P. 1.944

Butner v. Beyer, 593 N.W.2d 133, 133 (Iowa 1999)

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I

Did the Trial Court err in overruling the Appellant's application to reinstate his first application for postconviction relief following dismissal under Iowa R. Civ. P. 1.944?

ROUTING STATEMENT

As this matter involves application of case law previously determined by the Iowa Court of Appeals and the Iowa Supreme Court, this case would be appropriate for the Iowa Court of Appeals.

STATEMENT OF THE CASE

The Appellant Francisco Villa Magana appeals the dismissal of his application for postconviction relief. The application was dismissed pursuant to Iowa R. Civ. P. 1.944 for not being timely prosecuted. The District Court overruled the Appellant's application to reinstate the application following dismissal. The undersigned filed for reinstatement of the case, which the Court denied. The Applicant filed a notice of appeal and contends the case should not have been dismissed as he made reasonable efforts to keep the case alive before and after the order to dismiss was entered. But for an oversight by the undersigned, the case would have remained active until such time as it was ready for trial.

STATEMENT OF THE FACTS

On October 17th, 2012, the Appellant filed an application for Postconviction Relief in connection with pleas of guilty and sentences in the following cases: AGCR076215, AGCR076110, AGCR075618 & FECR076562. (App. pg. 6) The Applicant raised issues relating to effective assistance of counsel and abuse of discretion in sentencing. On October 22nd, 2012, the Court entered an order appointing the Public Defender and in the event of the Public Defender was unable or unwilling to accept the case, a follow up attorney was named. On January 22nd, 2013, Sam Lyons took over as counsel for the Applicant / Appellant herein. (App.

9) Trial was set for August 1, 2013. (App. 11) On July 26th, the Appellant filed a motion to continue trial as a witness was unavailable. (Motion) Trial was reset for February 13th, 2014. (Order) On February 6th, 2014, the State of Iowa answered the Application. (Answer) On February 14th the Court set a trial scheduling conference and the matter was reset for trial on April 16th, 2014. (Order) A series of additional attorneys were appointed and withdrawn. The undersigned was appointed on March 27th, 2014. (App. 13) Trial was reset to July 31st, 2014. (App. 15) On July 9th, a new trial scheduling conference was arranged and the matter was set for trial on December 12th, 2014. (App. 17) Shortly before trial, the Appellant's trial counsel from the underlying criminal case entered an appearance in the present case. (App. 18) As the claims in the case included ineffective assistance of trial counsel, the undersigned did not immediately withdraw.

The Court scheduled a hearing in which to clear any confusion with the case. That hearing was held on December 11th, 2014. At that hearing, the undersigned was advised this case would be put on hold while trial counsel filed a motion for a new trial. (App. 19) This case was dismissed for failure to timely prosecute the case and the undersigned filed a timely motion to reinstate. The State resisted the motion and the Court denied the Applicant's motion to reinstate. The Applicant filed a timely motion to reconsider which was also denied. The Applicant filed a timely notice of appeal.

ARGUMENT

Did the Trial Court err in overruling the Appellant's application to reinstate his first application for postconviction relief following dismissal under Iowa R. Civ. P. 1.944?

Error was preserved by filing an application to reinstate the application for postconviction relief after it was dismissed pursuant to Iowa R. Civ. P. 1.944.

Standard of review: This action was filed at law; the standard of review is for the correction of errors at law. Iowa R. App. P. 6.4. *Wilimek v. Danker*, 662 N.W.2d 375 (Iowa Ct. App. 2003)

The Appellant contends the District Court erred in denying his application to reinstate the postconviction relief application when it was dismissed pursuant to Iowa R. Civ. P. 1.944 for failure to timely prosecute the action. The argument is two pronged in that the Appellant argues reinstatement is mandatory under the rule, or in the alternative that the District Court abused its discretion in refusing to reinstate the case. If the Appellant can prevail on either prong, the case must be reinstated.

The plaintiff has the burden to keep the case alive and avoid automatic dismissal under the rule. *Danker*, 662 N.W.2d 375 (Iowa Ct. App. 2003). The

Applicant, who is now the Appellant, had the burden to keep the case alive. The Appellant intended to keep this case alive. The Appellant privately retained counsel to pursue a motion for a new trial in the underlying criminal case, while this case was pending. Appellant did not realize that motion would place the present action on hold. The Appellant was informed by Court order that this case would be on hold until the motion for a new trial was resolved. The undersigned has not been able to obtain documents regarding the disposition of the motion for a new trial, but is advised by the Appellant the matter was resolved sometime in January or February of 2016. It appears the undersigned failed in one respect, which was failing to request this case be exempted from automatic dismissal due to being outside Iowa R. Civ. P 1.944 timelines.

Once the case was dismissed, the rule allowed an opportunity for reinstatement. Under some circumstances, reinstatement is mandatory, in others it is discretionary.

The burden is upon the movant to establish adequate reasons for reinstating the action. *Wharff v. Iowa Methodist Hospital*, 219 N.W.2d 18, 22 (Iowa 1974). There are two determinations to be made in such a motion; whether reinstatement is mandatory because there has been proof of oversight, mistake or other reasonable cause, or if such proof is insufficient, then whether reinstatement should be granted in the discretion of the court. *Rath v. Sholty*, 199 N.W.2d 333, 335 (Iowa 1972). The trial court's decision as to whether there is a sufficient showing of mistake or oversight is not a factual but a legal question on review. *Id.* at 336. In reviewing the trial court's discretionary

decision to grant or deny reinstatement, we will reverse only if there is an abuse of discretion. *Id.* Rule 215.1 has been compared to rules 236 and 252, and, as with those rules, the court takes a liberal approach to allow a trial on the merits. *Wharff*, at 21-22. *Matter of Estate of Bearbower*, 376 N.W.2d 922, 923 (Iowa Ct. App. 1985)

The first step in the analysis is to determine whether reinstatement is mandatory or discretionary. The Appellant contends reinstatement is mandatory. In the event the Court is not convinced reinstatement is mandatory, the Appellant contends the trial court abused its discretion by refusing to grant the Appellant's application to reinstate his case.

The Appellant contends the evidence supports his position that dismissal was a result of oversight, mistake, or other reasonable cause, which would make reinstatement mandatory. The order entered December 11th, 2014, makes it clear this case is to be continued indefinitely. The attorneys were tasked with the responsibility to advise the Court when the matter needed to be reset. While the cleaner and more safe approach would have been to file a second application to avoid dismissal under Iowa R. Civ P. 1.944 the undersigned failed to do so. The order reference above shows the Appellant was reasonable in relying on counsel's motion for a new trial in the underlying criminal case to be completed prior to taking any further action in the District Court on the present case. The Appellant

did not intend to waive or give up his rights to proceed on the present matter in the event the motion for a new trial was denied.

In *Bearbower*, the Court defined or explained the type of mistake which meets the standard for mandatory reinstatement.

However, proof of accident or excusable neglect where there was a good faith intent to defend or continue the action is a sufficient justification. *Id.* “Oversight” has been defined as “something overlooked” or “omission or error due to inadvertence.” *Id.* at 23. “Inadvertance” is “lack of care or attentiveness.” *Id.* On one hand an oversight is similar to excusable neglect, but it is not gross neglect nor willful procrastination. *Id. Matter of Estate of Bearbower*, 376 N.W.2d 922, 924 (Iowa Ct. App. 1985)

There is only one mistake or omission which caused this case to be dismissed. The undersigned failed to file a motion to exclude the case from dismissal. As one can see, the Appellant and his counsel intended to try this case and were working toward resolution once the case was no longer on hold.

Notably, the error was made by the attorney and not the Appellant. As the Appellant was active in this case, he contends this factor further requires reinstatement of this case. The Appellant hired counsel to file a motion for a new trial in the underlying criminal action.

In general, the distinction between client error and attorney error is relevant in determining whether a default judgment should be overturned. It would not seem to be the sole factor, however; rather, it is part of the overall situation which might include prompt attention to

the default, existence of a meritorious defense, appellate court's reliance on trial court's discretion and the policy of trial on the merits. Furthermore, there are limits on the extent to which the distinction will be carried.... The problem thus is not so much who made the cause for dismissal but the substance of the cause. *Matter of Estate of Bearbower*, 376 N.W.2d 922, 924 (Iowa Ct. App. 1985)

The Court should also consider this matter was not set for trial and was not going to be allowed to be set for trial until the motion in the criminal case was finally resolved.

There was no trial date set which may cause the Appellant a problem on its face, but can be explained as set forth below.

One of several factors to be considered in determining whether reinstatement is mandatory is “whether the plaintiff was seeking a trial assignment or merely a continuance when the case was dismissed. *Tiffany v. Brenton State Bank of Jefferson*, 508 N.W.2d 87, 91 (Iowa Ct. App. 1993)

No trial was set, nor was one being pursued by the Appellant. The Appellant’s reasonable understanding was that no action would be taken on this case until the motion for a new trial in the underlying criminal case had been resolved. The motion was not resolved until after the dismissal of the present case. The Appellant contends this case is similar to *Butner v. Beyer*, 593 N.W.2d 133,

133 (Iowa 1999), in which as case placed on hold while a Bankruptcy was pending.

Pursuant to Iowa R. Civ. P. 1.944(6) The Court may grant reinstatement, in its discretion, provided there is a timely application for reinstatement filed stating the reasons for which reinstatement is being sought. The undersigned has found no examples where discretionary reinstatement has been granted, by an appellate court reversing a district court which choose to deny reinstatement as a matter of discretion, but believes this to be a good case for reinstatement. In the event the Court is not persuaded the Appellant meets the criteria for mandatory reinstatement, the Appellant requests the Court find the District Court abused its discretion by refusing to reinstate this case. The Appellant filed a separate action which he understood to stay this action. The Appellant contends he did everything which he could do to keep his case moving forward and diligently pursuing trial until the case was put on hold for the motion for a new trial in the underlying criminal case. The case was set for trial. As the motion for a new trial could have mooted this action, no trial date was reset. It was only continued outside the time for mandatory dismissal when his trial attorney, from the underlying criminal case, elected to pursue a motion for a new trial, immediately prior to the trial date in this action. Following that continuance, even the District Court noted the matter would

be reset only upon completion of the motion for a new trial in the underlying criminal case.

The Appellant contends another factor should be considered by the Court. The Appellant was taken into Immigration Customs Enforcement custody following his release from custody. He was not advised his Immigration status was in jeopardy following his plea of guilty.

CONCLUSION

For the reasons stated above, the Appellant requests the Court reverse the decision of the District Court, order reinstatement of the Appellant's case and direct the matter be reset for trial.

REQUEST FOR ORAL ARGUMENT

The Appellant respectfully requests to be heard in oral argument.

Respectfully Submitted,

/s/ Christopher A. Clausen

Christopher A. Clausen
Clausen Law Office
315 6th Street
Suite 201
Ames, Iowa 50010

515-663-9515 phone
515-422-6364
515-663-9517 fax
chris@cacloia.com

COSTS CERTIFICATE

As the brief was prepared electronically and filed electronically, the Appellant is aware of no costs which would properly be includible in a cost certificate.

Certificate of Compliance with Type-Volume Limitations, Typeface Requirements and Type-Style Requirements

1. This brief complies with the type-volume limitation of Iowa R. App. P.

6.903(1)(g)(1) or (2) because:

this brief contains 2179 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

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/s/ Christopher A. Clausen _____ August 14, 2017
Christopher A. Clausen Date

CERTIFICATE OF SERVICE

The undersigned states to the Court that he placed a copy of the brief in this matter in the United States Postal Service, with sufficient postage prepaid to ensure its delivery at the Hardin County Jail, by placing the same in the United States Post Office on August 14th, 2017. /S/ *Christopher A. Clausen*