

IN THE COURT OF APPEALS OF IOWA

No. 8-453 / 07-1593
Filed July 30, 2008

DEAN HAGEN,
Plaintiff-Appellant,

vs.

**IOWA STATE UNIVERSITY,
JOHN RANDALL ALEXANDER,
a/k/a RANDY ALEXANDER,
STUART L. BURGER, CAROL
PETERSON, DAVID PROPELKA,
and JOHNNY PICKETT, Each in
Their Official Capacity and Each in
Their Individual Capacity,**
Defendants-Appellees.

Appeal from the Iowa District Court for Story County, David R. Danilson,
Judge.

Dean Hagen contends the district court erred in failing to reinstate his
case pursuant to Iowa Rule of Civil Procedure 1.944. **AFFIRMED.**

Robert A. Wright, Jr., of Wright and Wright, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Diane M. Stahle, Assistant
Attorney General, for appellees.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

The sole question in this case is whether the district court erred in refusing to reinstate Dean Hagen's lawsuit after it was dismissed for want of prosecution. We affirm the district court's decision.

I. Background Facts and Prior Proceedings

On August 2, 2004, Hagen filed a six count action against Iowa State University, John Randall Alexander, Stuart L. Burger, Carol Peterson, David Propelka, and Johnny Pickett claiming breach of contract, violation of the whistleblower statute, intentional interference with contractual relations, age discrimination, wrongful discharge, and constitutional due process violations.

In November 2005 the defendants requested a continuance of the original February 21, 2006 trial date because of a change in counsel for two of the defendants. The court granted a continuance and the trial was rescheduled for August 22, 2006.

Because Hagen would not comply with their discovery requests, the defendants filed a motion in May 2006 asking the court to compel Hagen to respond to their discovery requests. Hagen did not file a resistance, so the district court granted defendants' motion and ordered Hagen to answer the defendants' discovery requests or be subject to possible sanctions, including up to, dismissal of the action. Hagen subsequently answered the defendants' requests for discovery.

On July 25, 2006, the Story County Clerk of Court notified counsel that the action would be dismissed pursuant to Iowa Rule of Civil Procedure 1.944 if it

was not tried by January 1, 2007. The notice specifically stated “Post December 31 trial or trial-setting conference dates [would] not serve to avoid dismissal.”

On August 21, 2006, the day before trial, Hagen requested a continuance because he was unable to locate one of his witnesses. The district court granted this motion and the court administrator rescheduled trial for January 23, 2007.

In October 2006 the defendants filed a motion for summary judgment. Hagen responded with a very brief resistance without any citations or supporting documentation. Over the next two months Hagen filed four motions and one amended motion asking the court for additional time to file documents to support his resistance and/or asking for a continuance of the date for the court’s consideration of the summary judgment motion.

Eventually, on January 2, 2007, the clerk of court notified all parties that the lawsuit was dismissed for want of prosecution. On January 4 the court issued an order cancelling trial, stating any further activity in the case “must await the Plaintiff’s reinstatement request, if any.”¹

More than five and one-half months later, on June 25, 2007, Hagen filed the present motion to set aside the January dismissal, alleging the dismissal was the “result of inadvertence or oversight.” The defendants resisted the motion, and the court held a hearing on the matter. Hagen did not call any witnesses to testify at the hearing. Instead, his attorney argued that the delay in bringing the case to trial was because he was trying to accommodate the defendants and their change of counsel in the fall of 2005. Hagen’s attorney also explained that

¹ Because of the rule 1.944 dismissal, the defendant’s motion for summary judgment was never ruled upon.

the five and one-month delay occurred because, once the case was dismissed, Hagen personally took the case file from his office for a period of time.

The district court rejected these arguments and entered an order denying the motion to set aside the dismissal. The court noted the facts of the case did not suggest a simple oversight or mistake and that Hagen's five and one-half month delay in filing the reinstatement motion did "not reflect reasonable diligence in preparing and pursuing this case for trial." Hagen filed a motion to reconsider, and the court affirmed its original ruling.

On appeal, Hagen contends the district court erred in not following the mandatory reinstatement provisions of rule 1.944 or, in the alternative, in not using its discretion to reinstate his petition.

II. Standard of Review

We review a denial of mandatory reinstatement for errors at law. *O'Brien v. Mullapudi*, 405 N.W.2d 815, 817 (Iowa 1987). The trial court's findings of fact are binding on appeal if supported by substantial evidence. *Id.* We review the district court's decision to deny discretionary reinstatement for an abuse of discretion. *Id.*

III. Merits

Iowa Rule of Civil Procedure 1.944(6) provides two grounds upon which a court may reinstate an action dismissed for want of prosecution: mandatory reinstatement and discretionary reinstatement.² "A prerequisite to either type of

² Rule 1.944(6) states:

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 is a showing by plaintiffs of reasonable diligence in preparing and pursuing the case for trial.” *O’Brien*, 405 N.W.2d at 817. For mandatory reinstatement, the plaintiff must additionally prove that the dismissal was the result of oversight, mistake, or other reasonable cause. *Id.* at 819.

The district court denied Hagen’s claims for either mandatory or discretionary reinstatement because it found insufficient proof that Hagen exercised reasonable diligence in preparing and pursuing the case for trial.³ On appeal, Hagen contends the court improperly considered the five and one-month timeframe between the dismissal order and his subsequent motion for reinstatement when it found he had failed to prove he exercised diligence in preparing and pursuing the case for trial. He claims this delay was irrelevant because he properly filed the motion within the six month timeframe set forth in rule 1.944(6).

Despite Hagen’s claims to the contrary, our review of Iowa case law interpreting rule 1.944 reveals that the length of time between dismissal and a subsequent request for reinstatement is a pertinent factor in the analysis of whether a party was diligently pursuing trial. For example, in *Wharff v. Iowa Methodist Hospital*, 219 N.W.2d 18, 25 (Iowa 1974), our supreme court included the four months between dismissal and the motion for reinstatement as part of the timeframe that showed a “total lack of activity on plaintiff’s part.” Likewise, in *O’Brien*, when discussing previous cases analyzing rule 1.944, the court made

reinstatement, setting forth the grounds therefor, shall be filed within six months from the date of dismissal.

³ The court also concluded that Hagen failed to prove the dismissal was the result of oversight, mistake, or other reasonable cause.

special note of the time period between the dismissal and the subsequent application for reinstatement. 405 N.W.2d at 817-18. Finally, in *In re Estate of Bearbower*, 376 N.W.2d 922, 925 (Iowa Ct. App. 1985), we noted that a factor mitigating in favor of reinstatement was that the plaintiff had “promptly” filed the application for reinstatement after receiving notice of the dismissal. Based on these prior cases, we find the court did not err when it considered the length of time between the dismissal and Hagen’s subsequent motion for reinstatement when denying Hagen’s request for reinstatement.

Even if we were to assume, *arguendo*, that the court should not have considered the delay in requesting a reinstatement, we would still find Hagen failed to prove he diligently prepared for trial in this case. Hagen did not present any affidavits or testimony to support his motion for reinstatement. Instead, he relied on the trial record and his counsel’s arguments during the motion hearing (which he now labels an offer of proof) to prove that he was diligently preparing and pursuing this case for trial.

We find these arguments unpersuasive. The record clearly suggests that, except for an initial flurry of activity following the filing of the petition, Hagen’s pursuit of this case was less than diligent. First, Hagen did not answer the defendants’ discovery requests until he was ordered to do so by the court. Then, on the eve of trial and with less than five months until the date of automatic dismissal, Hagen persuaded the court to grant his motion for continuance. Finally, on four separate occasions during the month and one-half prior to dismissal, Hagen requested additional time to respond to a motion for summary judgment. None of these actions suggest that Hagen was diligently preparing

and pursuing this case for trial. See *Tiffany v. Brenton State Bank of Jefferson*, 508 N.W.2d 87, 90 (Iowa Ct. App. 1993) (“Even if there was activity in the preparation of a case for trial, however, a pattern of delays by plaintiff or its counsel violates the spirit of the rule.”).

Because Hagen failed to prove the prerequisite for reinstatement—that he was diligently preparing and pursuing the case for trial—we affirm the district court’s decision denying his claims for both mandatory and discretionary reinstatement under rule 1.944.

AFFIRMED.