

IN THE COURT OF APPEALS OF IOWA

No. 9-691 / 08-1879
Filed September 17, 2009

DUANE YATES,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Steven J. Andreasen, Judge.

Duane Yates appeals from an order of the district court denying a motion for reinstatement of his action for postconviction relief. **AFFIRMED.**

Timothy A. Scherle, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Patrick Jennings, County Attorney, and Terry C. Ganzel, Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

Duane Yates was convicted of sexual abuse in the second degree on August 23, 2002. His conviction was upheld by this court. *State v. Yates*, No. 02-1681 (Iowa Ct. App. Nov. 17, 2003). On July 2, 2004, Yates filed an application for postconviction relief. On July 28, 2005, the Woodbury County Clerk of Court sent Yates's counsel a notice to try or dismiss pursuant to Iowa Rule of Civil Procedure 1.944. The notice informed Yates that the case would be dismissed on January 1, 2006, if it was not tried before that date. On December 27, 2005, Yates filed an application for continuance and consolidation of cases and stipulation, asking for a continuance until June 30, 2006. The district court granted the motion continuing the case until June 30, 2006, "at which time it shall stand dismissed unless tried or further continued prior to said date." Various motions were filed and hearings were held in early 2006. The case was not tried or continued before June 30. On July 14, Yates filed a request for production of documents. On August 9, 2006, the clerk of court filed a dismissal indicating the case had been dismissed as of July 1, 2006, pursuant to rule 1.944. On June 20, 2008, almost two years later, Yates filed a motion for reinstatement. After hearing, the district court denied the motion. Yates appeals.

Iowa Rules of Civil Procedure are applicable to postconviction relief proceedings. Iowa Code § 822.7 (2003); *Nuzum v. State*, 300 N.W.2d 131, 132-33 (Iowa 1981) ("Rules and statutes governing the conduct of civil proceedings are applicable to postconviction proceedings."). Our review of rule 1.944(6) motions to reinstate is at law and not de novo. *Walker v. State*, 572 N.W.2d 589, 590 (Iowa 1997).

When a case subject to rule 1.944 is continued, the case is not removed from the operation of the rule but is simply given a later deadline for trial or other disposition. See *Miller v. Bonar*, 337 N.W.2d 523, 526 (Iowa 1983) (holding that a continuance did not remove the case from operation of the rule; it merely moved the mandatory dismissal date back six months); *Brown v. Iowa Dist. Ct.*, 272 N.W.2d 457, 458 (Iowa 1978) (“If the order continuing the case is not complied with, the case stands dismissed.”). An order continuing the case merely holds the dismissal in suspension on certain conditions that, if not met, result in automatic dismissal. *Allied Gas & Chem. Co., Inc. v. Federated Mut. Ins. Co.*, 365 N.W.2d 26, 31 (Iowa 1985). The order continuing Yates’s postconviction relief proceeding merely moved the mandatory dismissal date back six months. Since the case was not tried or continued prior to June 30, 2006, the case was automatically dismissed by operation of the rule on July 1, 2006. No further action on the part of the clerk or court was required. *Brown*, 272 N.W.2d. at 459. It mattered not that discovery was pending at the time. *Id.* at 458.

Rule 1.944(6) provides that an application for reinstatement shall be filed within six months of the date of dismissal. Our supreme court

has repeatedly held that even if “good cause” is shown for reinstating a case dismissed pursuant to rule [1.944], a district court lacks the authority to do so where the application for reinstatement was filed more than six months after the dismissal.

Walker, 572 N.W.2d at 590. Yates’s motion to reinstate was not filed until June 20, 2008, almost two years after the case had been automatically

dismissed. The trial court correctly ruled it lacked jurisdiction to reinstate the case. *Greif v. K-Mart Corp.*, 404 N.W.2d 151, 155 (Iowa 1987).

AFFIRMED.