

SUPREME COURT OF IOWA

Wilimek v. Danker

671 N.W.2d 25 (Iowa 2003) · No. No. 02-0271 · Decided September 4, 2003

SUMMARY

The Supreme Court of Iowa affirmed dismissal of Brian Wilimek’s tort action after he failed to bring it to trial during the calendar year specified in a court order continuing the case. The court held that later continuance orders entered during a district-court-ordered stay modified the stay and subjected the action to Iowa’s try-or-dismiss rule. It also held that dismissal occurred automatically despite the clerk’s failure to send a new try-or-dismiss notice and did not violate due process.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Carter, Justice
JURISDICTION	Iowa
DECIDED	September 4, 2003
DOCKET	No. 02-0271
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed the district court's ruling that his tort action had been automatically dismissed under Iowa Rule of Civil Procedure 1.944 after he failed to bring it to trial during the applicable calendar year. The court of appeals rejected his claims, and the Supreme Court of Iowa affirmed.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Brian Wilimek v. William Danker, John Danker, David Danker, individually and d/b/a Danker Farms, Bob Johnson d/b/a Johnstown Welding, Unknown X, Funks-Ciba Geigy, Inc., a New York corporation f/k/a Funk Seed International

TOPICS

- civil procedure
- sanctions
- appellate procedure
- preservation of error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a district court's stay of its own proceedings prevented automatic dismissal under Iowa Rule of Civil Procedure 1.944 when the court later entered orders requiring the case to be tried by specified dates.
2. Whether automatic dismissal was improper because the clerk did not send a new try-or-dismiss notice during calendar year 2000.
3. Whether automatic dismissal under the clearly stated terms of the court's requested continuance orders violated article I, section 9 of the Iowa Constitution.

HOLDINGS

1. A district court's own stay does not prevent automatic dismissal when the court later enters orders, at the plaintiff's request, requiring trial within a specified period subject to dismissal; those later orders operate as modifications of the stay.
2. When a continuance is granted on specified terms and those terms are not met, a case subject to Iowa Rule of Civil Procedure 1.944 is dismissed by operation of law even if the clerk did not send a subsequent try-or-dismiss notice.
3. Automatic dismissal pursuant to the clearly stated provisions of a continuance order issued at the plaintiff's request does not violate article I, section 9 of the Iowa Constitution.

KEY QUOTATIONS

"The above-entitled case is removed from the operation of Iowa Rule of Civil Procedure 215.1 and continued into the calendar year 2000, to be tried on or before December 31, 2000, or said cause will stand dismissed." (26)

"When those conditions are not met the dismissal is automatic." (27)

FACTUAL BACKGROUND

Brian Wilimek was injured while unloading a truck for the Danker defendants and brought a tort action while pursuing a related workers' compensation claim. The tort action was stayed in May 1993, but the district court thereafter entered annual orders continuing the case for trial during the next calendar year and warning that failure to try it would result in dismissal. The case was not tried during calendar year 2000, and no timely request was made that year to extend the deadline.

PROCEDURAL HISTORY

Wilimek filed a tort action against his employers and other defendants while also pursuing a workers' compensation claim. The tort action was stayed in 1993, but the district court subsequently entered annual orders, at Wilimek's request, continuing the case for trial subject to automatic dismissal. No extension or trial

occurred during calendar year 2000, so the district court ruled that the case was automatically dismissed on January 1, 2001. The court of appeals affirmed, and the Supreme Court of Iowa affirmed both judgments.

DISPOSITION

affirmed

CASES CITED

- Allied Gas & Chemical Co. v. Federated Mutual Insurance Co., 365 N.W.2d 26 (Iowa 1985)
- Rhiner v. Arends, 292 N.W.2d 399 (Iowa 1980)
- Brown v. Iowa District Court, 272 N.W.2d 457 (Iowa 1978)

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