IN THE SUPREME COURT OF IOWA

Case No. 22-0365

SUSAN RONNFELDT

Appellant/Plaintiff,

v.

SHELBY COUNTY CHRIS A. MYRTUE MEMORIAL HOSPITAL d/b/a MYRTUE MEDICAL CENTER and SHELBY COUNTY MEDICAL CORPORATION,

Appellee/Defendants,

Appeal from the Honorable Richard H. Davidson
of the Iowa District Court in and for Shelby County

Shelby County District Court Case No. CASE NO.: LACV020391

FINAL BRIEF OF APPELLANT/PLAINTIFF SUSAN RONNFELDT.

July 6, 2022

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Statement of Issues Presented for Review

Whether the Shelby County District Court had jurisdiction to address and grant Appellants' Motion to Reconsider and dismiss with prejudice after Plaintiff had voluntarily dismissed the matter.

Whether Iowa Code § 147.140, which mandates dismissal with prejudice for failing to timely file a certificate of merit, amounts to an unconstitutional violation of the separation of powers doctrine, as it conflicts with the absolute right to voluntarily dismiss under Rule of Civ. P 1.943.

Routing Statement

Pursuant to Iowa R. App. P. 6.1101(2)(d) and Iowa R. App. P. 6.1101(2)(f), this case is appropriate for retention by the Iowa Supreme Court, as it seemingly presents issues of public import and changing legal principles.

Statement of the Case

Susan Ronnfeldt filed a Complaint against Shelby County Chris A. Myrtue Memorial Hospital d/b/a Myrtue Medical Center and Shelby County Medical Corporation (hereinafter "Myrtue / Shelby") on June 2, 2021 and an Amended Complaint on June 23, 2021 alleging negligent medical care. (Plaintiff's Amended Complaint App. 4-7) Myrtue / Shelby filed an Answer and Jury Demand on July 1, 2021. On October 27, 2021, Myrtue / Shelby filed a Motion to Dismiss on grounds that Ronnfeldt failed to timely file a certificate of merit as required by Iowa Code §147.140. (Defendants' Motion to Dismiss App. 14 -17) The same day Ronnfeldt filed a voluntarily dismissal without prejudice. (Voluntary Dismissal App. p 18)

Based on the voluntary dismissal filed by Ronnfeldt, the clerk of the district court closed the file. On November 1, 2021 the District Court Judge issued an Order acknowledging the voluntary dismissal stating "Defendants Motion for dismissal based on failure to serve a certificate of merit pursuant to Iowa Code section 147.140 is moot." (District Court Order dated November 1, 2021, App. 19-20)

On November 11, 2021, Myrtue / Shelby filed a Motion to Reconsider the District Court's ruling deeming the Motion to Dismiss moot and seeking dismissal with prejudice. (Motion to Reconsider App. 21-46) The District

Court held telephonic hearing on November 19, 2021 which was not transcribed. The District Court then issued an Order on February 1, 2022 finding that it could retain jurisdiction for the limited purpose of considering Appellee/Defendants' Motion to Reconsider / Motion to Dismiss. The District Court dismissed the matter with prejudice due to Ronnfeldt's failure to timely serve a certificate of merit as required by Iowa Code § 147.140. (Ruling on Motion to Reconsider dated February 1, 2022 App. 56 -59)

Appellant timely filed a Notice of Appeal. (Notice of Appeal App. 60)

Statement of the Facts

Ronnfeldt underwent a hernia repair surgery in May of 2016 conducted by Myrtue / Shelby. As part of the medical treatment provided by Myrtue / Shelby a CT scan was conducted of Ronnfeldt's abdomen which revealed an incidental finding of a possible malignant tumor. The CT scan report included a recommendation for follow up on this incidental finding. Ronnfeldt was not advised of the incidental finding and recommendation for follow up. (Amended Complaint App. 4 -7)

Over four years later, on December 7, 2020 Ronnfeldt sought medical treatment at Myrtue / Shelby for abdominal pain and complications. On December 8, 2020 an abdominal CT scan was conducted and revealed that the very same tumor detected on above mentioned 2016 CT scan, grew and progressed significantly. (Amended Complaint App. 4 - 7) On February 2, 2021 Ronnfeldt was admitted to Nebraska Medicine and underwent removal of the tumor and hysterectomy. Ronnfeldt was subsequently diagnosed with Stage IV uterine cancer. Ronnfeldt thereafter underwent chemotherapy. (Amended Complaint App. 4 -7)

Ronnfeldt filed suit against Myrtue /Shelby on June 2, 2021 and filed an Amended Complaint on June 23, 2021. The Statement of the Case above recites how the litigation proceeded from there.

Argument

Argument I: Ronnfeldt Voluntarily Dismissed the Case as Allowed Under Rule of Civ. P. 1.943 Which Terminated Jurisdiction of the Case and, therefore, It Was Error for the District Court to Consider Appellee / Defendants' Motion to Reconsider and Dismiss the Matter With Prejudice.

1. Iowa Rule of Civil Procedure 1.943 Provides Plaintiff an Absolute Right to Dismiss a Claim at Any Time up Until Ten Days Before a Trial is Scheduled.

Iowa Rule of Civil Procedure 1.943 (previously Iowa R.Civ.P. 215) provides:

> A party may, without order of court, dismiss that party's own petition, counter-claim, cross-claim, cross-petition or petition of intervention, at any time up until ten days before the trial is scheduled to begin. Thereafter a party may dismiss an action or that party's claim therein only by consent of the court which may impose such terms or conditions as it deems proper; and it shall require the consent of any other party asserting a counterclaim against the movant, unless that will still remain for an independent adjudication.

Iowa case law analyzing this rule has maintained that the court has no discretion to prevent a voluntary dismissal. In the case of *Lawson v.*

Kurtzhals, 792 N.W.2d 251, 255 Iowa (2010), the Court stated,

> It is clear from the plain language of rule 1.93 (Iowa R.Civ.P. 215) that the court lacks the discretion to deny a party's motion to voluntarily dismiss "at any time up until ten days before the trial is scheduled to begin." Id. The phrase "without order of court" indicates that this may be done at the will of the party; thus, the court retains no discretion to prevent such dismissal.

The case of *Venard v. Winter*, 524 N.W.2d 163, (Iowa 1994) also addresses the matter and provides the general proposition that a court has no discretion to prevent such a dismissal.

> Under rule 215, a party has an absolute right to dismiss the action at any time "up until ten days before the trial is scheduled to begin." Iowa R.Civ.P. 215; *Witt Mechanical Contractors, Inc. v. United Bhd. of Carpenters & Joiners*, 237 N.W.2d 450, 451 (Iowa 1976). Accord *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d 53, 54 (Iowa 1989). (There is no contention that Venard's case had been set for trial when he dismissed it.) Rule 215 is clear that the first dismissal is without prejudice. A dismissal without prejudice is not ordinarily res judicata of the merits of the controversy. A dismissal without prejudice leaves the parties as if no action had been instituted. It ends the particular case but is not such an adjudication itself as to bar a new action between the parties. *Windus v. Great Plains Gas*, 254 Iowa 114, 124, 116 N.W.2d 410, 415–16 (1962) (citations omitted) (defining dismissal "without prejudice" in Iowa Rule of Civil Procedure 215.1, the dismissal for lack of prosecution rule).

Id. at 167.

2. A Dismissal Without Prejudice under Iowa Rule of Civil Procedure 1.943 (old Rule 215) Deprives the Court of Jurisdiction.

In the above mentioned case of *Venard v. Winter*, 524 N.W.2d 163, (Iowa 1994), the Court acknowledged that "a dismissal without prejudice under Rule 215 deprives the court of jurisdiction." *Id* at 167.

At the District Court level, in their Motion to Reconsider, Appellee /Defendants pointed out that the *Venard* case discussed the case of *Darrah v. Des Moines General Hospital*, 436 N.W.2d 53 (1989) and maintained that this case carved out an exception to the rule that a court is deprived of jurisdiction once a case has been voluntarily dismissed.

The District Court agreed that *Darrah* allowed for it to re-assume jurisdiction after Ronnfeldt's voluntary dismissal. The *Darrah* case, however, is distinguishable from the instant case and inapplicable.

First, it is very important to note that in *Darrah* the exception that the Appeals Court carved out was particular to Iowa Rule Civ. P. 80(a) sanctions. The *Darrah* case did not contemplate any other scenarios. The instant case does not involve an effort by Appellee / Defendants to request a Rule 80(a) sanction.

Furthermore, in *Darrah*, the Appeals Court carved out an exception to allow for jurisdiction to impose sanctions for the wrongful conduct of a

party. "We recognize an exception that retains the court's authority to adjudicate the collateral problem created by prior **wrongful conduct** of the dismissing party warranting rule 80(a) sanctions." (emphasis added) *Id.* at 55.

The particular facts of wrongful conduct in *Darrah* were noted to be that "defendant physicians requested sanctions under rule 80(a) for pleadings and motions filed by plaintiff that were not based on 'a well-founded belief that the plaintiff would be successful in this action'." *Id*. at 53. The *Darrah* Court noted examples in other cases interpreting the federal counterpart to Rule 80(a). All the cases mentioned involved sanctions for groundless complaints, wasting time and resources of the defendant other poor behavior or contempt of court. See *Szabo Food Service Inc. v. Canteen Corp*, 823 F.2d at 1077–79; *Muthig v. Brant Point Nantucket, Inc*., 838 F.2d 600, 603–04 (1st Cir.1988); *Kurkowski v. Volcker,* 819 F.2d 201, 203 (8th Cir.1987); *Greenberg v. Sala*, 822 F.2d 882, 885 (9th Cir.1987).

In the instant case, there has been no allegation of willful misconduct, wrongful conduct, a baseless claim, a questionable claim, or Appellee otherwise being frustrated during litigation such that a Rule 80(a) sanction should be imposed. To the contrary, the allegations contained on face of Amended Complaint provide clarity on the nature of the claim and the

alleged facts can be easily verified.

Given that a Rule 80(a) sanction was not implicated, the District Court did not have any basis to assume jurisdiction to consider Appellees' Motion to Reconsider and then dismiss the case with prejudice. The matter should be remanded with Order to reinstate Appellant's voluntary dismissal without prejudice.

Argument II. Iowa Code § 147.140 is Violative of the Separation of Powers Doctrine as it Conflicts with the Absolute Right to Voluntarily Dismiss under Rule of Civ. P. 1.943 and is Therefore Unconstitutional.

In 1941, the general assembly enacted a statute authorizing the court to prescribe all rules of pleading, practice, and procedure for all proceedings of a civil nature. (codified at Iowa Code §§ 684.18, .19 (1946); recodified I.C.A. § 602.4201). Iowa Code § 602.4201 states in relevant part:

> 1. The supreme court may prescribe all rules of pleading, practice, evidence, and procedure, and the forms of process, writs, and notices, for all proceedings in all courts of this state, for the purposes of simplifying the proceedings and promoting the speedy determination of litigation upon its merits.
>
> 3. The following rules are subject to section 602.4202:
>
> a. Rules of civil procedure.

Recently, in 2017 the legislature enacted Iowa Code § 147.140 which mandates dismissal with prejudice if a certificate of merit is not filed within 60 days of the Answer disclosing a standard of care witness in a professional malpractice case.

Appellant maintains that the legislature usurped the authority of the judiciary when it enacted Iowa Code § 147.140 in 2017 as it conflicts with a litigant's absolute right to voluntarily dismiss a case under Iowa Rule of Civ. P. 1.943.

Significantly, the District Court, in issuing its ruling in this case acknowledged "To be sure a conflict exists between Rule of Civ. P. 1.943 and Iowa Code § 147.140 that has yet to be resolved at the appellate level…" (Ruling on Motion to Reconsider dated February 1, 2022; App. p 34)

This case appears to be one of first impression.

In the case of *State v. Tucker*, 959 N.W.2d 140, 159 -160 (2021) the concurring opinion of Justice Appel contains a helpful discussion of cases in other states that address the separation of powers doctrine in the context of legislative actions that conflict with rules of procedure set by the judiciary:

> A number of cases from other states have considered whether legislative efforts to control judicial processes offend separation of powers. See, e.g., *Solimito v. State*, 188 Ind. 170, 122 N.E. 578, 578

(1919) ("This court has power to make its own rules as to briefs, and as to the conduct of business before the court. It is not a legislative function to make rules for the court, or to say what the court shall consider a sufficient brief."); *Coate v. Omholt*, 203 Mont. 488, 662 P.2d 591, 593–97 (1983) (invalidating several statutes which imposed time limitations for rendering a decision and imposed sanctions for violations of the prescribed time limits); *State v. LaFrance*, 124 N.H. 171, 471 A.2d 340, 346 (1983) (per curiam) ("[T]he power of the judiciary to control its own proceedings, the conduct of its participants, the actions of officers of the court and the environment of the court is a power absolutely necessary for a court to function effectively and do its job administering justice."). Specifically, many states have held that court procedural rules trump legislative acts so long as the rule does not implicate a substantive right. See, e.g., *Duff v. Lee*, 246 Ariz. 418, 439 P.3d 1199, 1206–08 (Ariz. Ct. App. 2019) (holding that a statute which required courts adopt mandatory arbitration was in direct contrast to and could not be harmonized with the supreme court procedural rule which implemented the Fast Trial and Alternative Resolution Program and therefore in violation of separation of powers), aff'd in part, vacated in part, 250 Ariz. 135, 476 P.3d 315 (2020); *State v. Rollinson*, 203 Conn. 641, 526 A.2d 1283, 1289 (1987) ("General Assembly lacks the power to enact rules governing [court] procedure .... "); *160 *Borer v. Lewis*, 91 P.3d 375, 380–81 (Colo. 2004) (en banc) (holding that if a legislative act were read to override a court procedural rule, it would be an unconstitutional "infringement on the judiciary's authority to promulgate procedural rules"); *J. T. v. O'Rourke*, 651 P.2d 407, 410 n.2 (Colo. 1982) (en banc) ("The court is free to consider and evaluate procedural enactments of the General Assembly; though, in cases of conflict, the court's procedural rule would necessarily control a procedural statute."); *Commonwealth v. Deweese*, 141 S.W.3d 372, 377 (Ky. 2003) ("[I]t would be a violation of separation of powers for the legislature to promulgate rules of practice and procedure for the court."); *People v. Watkins*, 491 Mich. 450, 818 N.W.2d 296, 308 (2012) ("In accordance with separation-of-powers principles, this Court's authority in matters of practice and procedure is exclusive and therefore beyond the Legislature's power to exercise."); *Berkson v. LePome*, 126 Nev. 492, 245 P.3d 560, 565 (2010) (en banc) ("[T]he legislature may not enact a procedural statute that conflicts with a pre-existing procedural rule, without violating the doctrine of separation of powers, and ... such a statute is of no effect.") (omission in original)

> (quoting *State v. Second Jud. Dist. Ct. ex rel. Cnty. of Washoe*, 116 Nev. 953, 11 P.3d 1209, 1213, (2000)); *Ammerman v. Hubbard Broad. Inc*., 89 N.M. 307, 551 P.2d 1354, 1359 (1976) ("[U]nder our Constitution the Legislature lacks power to prescribe by statute rules of evidence and procedure, this constitutional power is vested exclusively in this court, and statutes purporting to regulate practice and procedure in the courts cannot be binding.").

The general guidance of these cases from other states and general proposition of law to be extracted from the above discussion is that, where a legislative act overrides a court procedural rule, it should be considered an unconstitutional infringement on the judiciary's authority to promulgate procedural rules.

In the instant case the legislature, in enacting Iowa Code § 147.140, infringed on the authority of the judiciary to promulgate its own rules governing procedure. This code section directly conflicts with the longstanding and absolute right of a Plaintiff to voluntarily dismiss a case afforded under Iowa Rule of Civ. P. 1.943. The legislature's effort in enacting Iowa Code § 147.140 amounts to a violation of the separation of powers doctrine and, as such, this code section should be declared unconstitutional.

Conclusion

The Iowa District Court in and for Shelby County improperly assumed jurisdiction after Ronnfeldt's voluntary dismissal and improperly dismissed the matter with prejudice. Thus, the reviewing Court should overturn the District Court's earlier dismissal with prejudice, and remand this matter to the Shelby County District Court for further proceedings. Alternatively, the Iowa Code § 147.140 should be struck down as an unconstitutional violation of the separation of powers doctrine.

Request for Oral Submission

Appellant requests to be heard in oral argument in this appeal upon submission of the case either to the Supreme Court of Iowa or Iowa Court of Appeals.

Certificate of Cost

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1. This brief complies with the type-volume limitation of Iowa R. App. P 6.903(1)(g)(1) because this brief contains 3,451 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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Signature: *s/ David J. Cripe* Date: July 6, 2022

Certificate of Service

I hereby certify that on the 6th day of July , 2022, I served this document by electronic filing via Iowa Appellate EDMS to:

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