

STATE OF MICHIGAN
COURT OF APPEALS

RELIABLE HOLDINGS, INC.,

Plaintiff-Appellant,

v

REVENUE DIVISION, DEPARTMENT OF
TREASURY, STATE OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
November 25, 2003

No. 241216
Court of Claims
LC No. 99-017489-CM

Before: Sawyer, P.J., and Griffin and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from the Court of Claims order denying plaintiff's motion to reinstate this action seeking a tax refund from defendant. We reverse and remand.

Plaintiff argues that the Court of Claims abused its discretion in refusing to reinstate plaintiff's case because the dismissal notice was sent to the wrong address. We review a decision regarding the reinstatement of a case for an abuse of discretion. *Wickings v Arctic Enterprises*, 244 Mich App 125, 138; 624 NW2d 197 (2000).

Plaintiff accurately asserts that the Court of Claims incorrectly found its trial counsel was at fault for the incorrect address because he had not changed his address with the state bar association. In fact, plaintiff's counsel had changed his address. Thus, the basis for the court's decision was incorrect. Defendant alleges that this error was balanced by the fact that plaintiff's counsel had actual notice of the dismissal six months before he took any action, was actively participating in other cases at the time he was reportedly too ill to practice, and defendant would be prejudiced by reinstatement of the case. While these reasons, if true, may support the court's decision, the court made no actual findings regarding these alleged facts. And the record indicates that these alleged facts may not have been a consideration had the court determined that it was at fault for mailing the notice to the wrong address. At the end of the hearing regarding this matter, the court stated, "If [the notice was] sent to a wrong address, obviously [plaintiff's counsel], his condition, I mean, he could have been a well person and not known of it. I am concerned about Plaintiff's rights being decided in this matter without some investigation."

The record clearly indicates that the court's belief that plaintiff's counsel failed to change his address was the sole stated reason for denying plaintiff's motion to reinstate the case. Because the court's decision was based on a faulty premise, we find that the court abused its

discretion in denying plaintiff's motion on this basis. Plaintiff also argues that it is entitled to reinstatement as a matter of right because notice was insufficient, relying on *Sezor v Proctor & Gamble Soap Co*, 267 Mich 128, 130; 255 NW 175 (1934). But the Court of Claims did not decide whether the notice was insufficient. Therefore, we reverse the court's judgment and remand in order for the court to reconsider plaintiff's motion to reinstate.

Reversed and remanded. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Richard Allen Griffin

/s/ Michael R. Smolenski