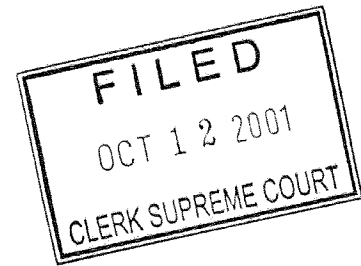


IN THE COURT OF APPEALS OF IOWA

No. 1-394 / 01-0078
Filed October 12, 2001



DEBRA ANN GROUT,
Appellant,

vs.

JOAN DONNA LAWRENCE and EMPLOYERS MUTUAL CASUALTY
COMPANY,
Appellees.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble,
Judge.

Plaintiff appeals the district court ruling dismissing her personal injury
action for failing to timely effectuate service of process. **AFFIRMED.**

Marc S. Harding, Des Moines, and Patrick W. O'Bryan, Des Moines, for
appellant.

Maureen Roach Tobin of Whitfield & Eddy, P.L.C., Des Moines, for
appellees.

Heard by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Debra Grout appeals the district court's dismissal of her suit against Joan Lawrence, contending the district court erred when it found she failed to make adequate efforts to effectuate timely service. Because we find the court's decision is supported by substantial evidence, we affirm the dismissal.

Background Facts and Proceedings. Debra Grout filed suit against Joan Lawrence on September 23, 1999, alleging Lawrence's negligent operation of a motor vehicle on July 26, 1998, resulted in bodily injury to Grout. At the time of the accident Lawrence had provided a Des Moines, Iowa, address and South Carolina license and registration information. Lawrence's driver's license number was not a social security number.

Grout's attorney failed to make any attempt to effect service on Lawrence. Realizing this lack of diligence would almost certainly result in a court dismissal of the petition, he filed a second petition on April 12, 2000. On July 21, 2000, Grout's attorney filed a request for alternative service of the second petition, alleging that numerous attempts to serve Lawrence at her home address were unsuccessful and that Lawrence's place of employment could not be determined. Grout requested both an extension of time to serve Lawrence and permission to accomplish such service by mail. The request did not make mention of the initial petition filed in 1999.

On July 25, 2000, the district court entered an order directing Grout to file, within fifteen days, either proof of service or a motion stating good cause for

¹ On August 22, 2000, the petition was amended to name Grout's own insurance company, Employers Mutual Casualty Company, as a defendant.

delay and requesting court authorization for alternative service. On September 20, 2000, apparently in response to an oral motion by Grout, the district court granted an extension of time for completing service. Reiterating Grout's assertions that she had been unable to obtain a new and valid address or driver's license information through the Motor Vehicle Department, and that she was diligently pursuing service, the court gave Grout until October 15, 2000, to personally serve Lawrence. Grout was able to accomplish personal service on September 22, 2000. That service was made in Milwaukee, Wisconsin, where Lawrence had been residing since September 1999.

Lawrence responded by filing a motion to dismiss, claiming the 163-day delay in service of the April petition was abusive. The motion apprised the court of the existence of the September 1999 petition, and the fact it had been neither served nor dismissed. By way of resistance, Grout supplied an affidavit from her attorney. The attorney claimed the petition had been given to the process server on April 13, 2000, the day after filing, but that the server had returned a note stating Lawrence had moved from her Des Moines address at least six months prior. The attorney alleged further efforts, including inquiry into Department of Transportation records, subpoenaing the Job Service, internet searches and hiring an investigative firm. However, the affidavit provided no specific time frame in which these acts were alleged to have occurred, and no supporting documentation, such as correspondence or records, was attached.

Grout filed a dismissal of the first petition on November 29, 2000, the same day as the hearing on Lawrence's request to dismiss the second petition.

After an unreported hearing the district court dismissed the second petition. It found the September 20 order extending the time for service was erroneously entered as “the court was uninformed about the prior unserved lawsuit that had been on file for a year.” It further found service of the petition was presumptively abusive, noting both the 163-day delay between the April filing and the September service, as well the time that had passed since the filing of the initial petition in 1999. The court concluded the delay could not be justified: “Plaintiff did not make an adequate effort to locate the defendant and serve her within the 90 days provided by rule. Plaintiff cannot establish good cause for extension of time for service or for the delay of service.” Grout now appeals.

Scope of Review. We review the district court’s dismissal for errors at law, looking to see whether the court’s factual determinations are supported by substantial evidence. *Carroll v. Martir*, 610 N.W.2d 850, 857 (Iowa 2000). In doing so we consider matters outside of the pleadings where the facts are undisputed and where, as here, the issue before us does not involve the merits of the petition. See *id.* at 856.

Good Cause. Under Iowa Rule of Civil Procedure 49(f), if the original notice is not served within ninety days after the filing of the petition, the court must either dismiss the petition or direct an alternative method of service. Iowa R. Civ. P. 49(f). However, if the petitioner can show “good cause” for the failure to serve within ninety days, the district court must extend the time for service. *Id.* Good cause requires a showing that the petitioner has:

taken some affirmative action to effectuate service of process upon the defendant or have been prohibited, through no fault of his [or

her] own, from taking such an affirmative action. Inadvertence, neglect, misunderstanding, ignorance of the rule or its burden, or half-hearted attempts at service have generally been waived as insufficient to show good cause.

Carroll, 610 N.W.2d at 858 (citations omitted).

The parties agree that, since service on Lawrence was not made within ninety days, the delay was presumptively abusive. They differ, however, as to whether Grout has shown good cause for the delay. In its ruling the district court did not specify why it found an absence of justification, but it does appear the failure to diligently pursue the initial September 1999 petition was a factor in the court's decision.

Upon reviewing the record in this case, we do not find the prior law suit to be a significant factor in assessing whether good cause has been shown. Iowa Rule of Civil Procedure 215 specifically grants Grout the right to voluntarily dismiss the first petition:

A party may, without order of court, dismiss that party's own petition . . . at any time up until ten days before the trial is scheduled to begin. . . . A dismissal under this rule shall be without prejudice, unless otherwise stated; but if made by any party who has previously dismissed an action against the same defendant, in any court of any state or of the United States, including or based on the same cause, such dismissal shall operate as an adjudication against that party on the merits, unless otherwise ordered by the court, in the interests of justice.

See also Venard v. Winter, 524 N.W.2d 163, 166 (Iowa 1994) (holding right of dismissal under rule 215 to be absolute). Contrary to Lawrence's contention, nothing in the rule limits the right of dismissal to those suits where original notice has been served. We therefore look to see whether the remainder of the record in this case supports the district court's ruling. *See In re T.N.M.*, 542 N.W.2d

574, 575 (Iowa Ct. App. 1995) (noting the court will affirm a district court ruling where any proper basis appears for the decision, even though it is not one upon which the district court based its holding).

Despite the fact that Grout bore the burden of demonstrating good cause, *Carroll*, 610 N.W.2d at 859, in an effort to meet that burden she did no more than make a number of non-specific allegations. Beyond the assertion the process server received the petition and original notice the day after filing, Grout did not indicate what portion of these events, if any, occurred within the requisite ninety days. Nor did she attach any supporting documentation, such as the note from the process server, a copy of the Job Service subpoena, correspondence to or from the Department of Transportation or the search firm, or affidavits from any individual or organization with relevant knowledge. Significantly, she did not notify the court of her difficulties and request an extension until after the ninety-day limitation had expired. See *id.* (as to one of three defendants, court could reasonably infer no action was taken between the filing of the petition and the request for an extension of time). Given the limited proof before the district court, there was substantial evidence to support its finding that Grout had failed to establish good cause for the delay in service.

Grout suggests the dismissal is nevertheless improper as the district court initially granted an extension of time to effect service. However, revisiting its prior order was within the district court's province. "A district court's power to correct its own perceived errors has always been recognized by this court, so long as the court has jurisdiction of the case and the parties involved."

McCormick v. Meyer, 582 N.W.2d 141, 144 (Iowa 1998) (quoting *Iowa Elec. Light & Power Co. v. Lagle*, 430 N.W.2d 393, 396 (Iowa 1988)). A party cannot claim a vested interest in a prior erroneous ruling. *Carroll*, 610 N.W.2d at 857. As previously noted, the record sufficiently establishes the extension of time was inappropriate, not because of the existence of the prior lawsuit, but because Grout had not taken adequate steps to demonstrate good cause.

AFFIRMED.

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