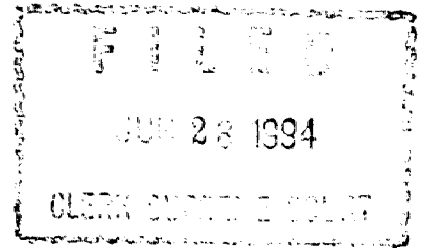


IN THE COURT OF APPEALS OF IOWA

No. 4-189 / 93-370



DOROTHY OTTERBACH and
LEONARD OTTERBACH,

Appellants,

vs.

STOUFFER FIVE SEASONS HOTEL
and STOUFFER HOTEL COMPANY
a/k/a STOUFFER HOTEL HOLDINGS,
INC., and THE UNKNOWN MANUFACTURER
AND DISTRIBUTOR OF THE ROLL-AWAY BED,

Appellees.

Appeal from the Iowa District Court for Linn County,
Thomas M. Horan, Judge.

Plaintiffs appeal district court rulings dismissing
their personal injury suit and denying their Iowa Rule of
Civil Procedure 179(b) motion. **AFFIRMED.**

Robert J. Hearity of Hearity Law Firm, Waterloo, for
appellants.

Stephen D. Hardy of Grefe & Sidney, Des Moines, for
appellees.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM

Dorothy Otterbach was injured at the Stouffer Five Seasons Hotel (Stouffer) in Cedar Rapids when her bed collapsed. She and her husband filed a petition at law on September 18, 1991, seeking damages from Stouffer and unknown manufacturer(s) of the bed for her personal injuries and loss of consortium.

The Otterbachs attempted to serve Stouffer through CT Corporation in Des Moines, Iowa. CT is apparently located at the same address as the law firm representing Stouffer in this action. CT returned the petition, indicating Stouffer Hotel Holdings, Inc. had withdrawn from the state and it was no longer Stouffer's registered agent. Stouffer's certificate of withdrawal had apparently been on file with the Iowa Secretary of State since August 30, 1990.

The Otterbachs' attorney also contacted Michael Fogelson of Liberty Mutual, Stouffer's insurer, in September 1991. The Otterbachs and Liberty supposedly agreed Liberty would not need an attorney unless settlement negotiations fell through. On July 27, 1992, Fogelson sent a demand letter with a final offer of \$20,000. The letter indicated Liberty believed there had been an unreasonable delay in service on Stouffer and the offer would expire in ten days.

On September 14, 1992, the Otterbachs attempted to serve Stouffer through CT Corporation in Cleveland, Ohio.

Stouffer filed a motion to dismiss, alleging an unreasonable delay in service, failure to serve the proper entity, and contended proper service had not been effectuated under Iowa's long-arm statute.

The Otterbachs then served Stouffer through the Iowa Secretary of State on November 24, 1992. Stouffer renewed defendants' motion to dismiss again claiming an unreasonable delay of service. The district court initially entered an order denying the motions to dismiss. However, pursuant to Stouffer's rule 179(b) motion, the court dismissed the Otterbachs' action due to an unreasonable delay in service and failure to serve the proper entity. The court denied the Otterbachs' rule 179(b) motion, and they have appealed.

Appellants first argue the trial court erred in reconsidering its ruling regarding the delay and should not have enlarged its findings and reversed its initial position. Appellees had filed a motion to dismiss based upon lack of personal jurisdiction. The judge initially ruled without making any specific findings of fact or conclusions of law. Appellees then filed a motion for enlargement, and the trial court made findings of fact, reversed its position, and dismissed appellants' petition. In its initial decision, the trial court stated:

Based upon the record made of this hearing and of the facts made of record, reasons stated and authorities cited in plaintiff's resistances filed . . . the court finds that plaintiffs had met their burden of proof showing that justification for delay in the service of notice on the defendants.

This type of general conclusory decision is exactly what the Iowa Supreme Court held to be improper and insufficient in Bankers Trust Co. v. Fidata Trust Co., 452 N.W.2d 411, 413 (1990). In that case, the court stated.

The trial court was remiss in its ruling, because the hearing and disposition of a motion involving personal jurisdiction is a special proceeding requiring it to find facts and draw conclusions of law in its decision.

Id. The trial court was correct in making additional findings of fact and conclusions of law. We affirm this issue on appeal.

The appellant next argues the trial court erred in determining the delay in service was not justified. The district court found, and the appellants did not dispute, a period of over one year passed from the time the petition was filed to the time appellees were served. A delay of such length in effecting personal service is presumptively abusive. Bean v. Midwest Bottling and Metal, Inc., 449 N.W.2d 353, 355 (Iowa 1989).

Appellants claim the delay was justified because it was uncertain where Stouffer should be served and additionally, appellant had made contact with Stouffer's insurance company. However, the record clearly indicates the insurance company was not accepting service and communicated to the defendants they must obtain proper service over Stouffer. Additionally, the record further shows Stouffer filed withdrawal papers with the Iowa Secretary of State. Stouffer's forwarding address was

written directly on those papers. Had appellant looked at the withdrawal papers, there would have been no delay in service. The ruling of the district court is affirmed.

AFFIRMED.