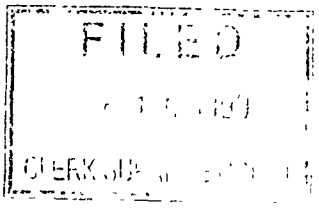
IN THE COURT OF APPEALS OF IOWA

No. 1999-55 (9-210) / 98-1463
Filed September 15, 1999



JAMES HANKINS and JEANINE HANKINS,
Plaintiff-Appellants,

vs.

JOSEPH BUKOVICH,
Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, Robert C. Clem, Judge.

Plaintiffs appeal from a district court ruling dismissing their petition for untimely service of process. **AFFIRMED.**

Dean L. Meine, Sioux City, and Kendra M. Zirbel Olson, Sioux City, for appellants.

Alan E. Fredregill and Jeff W. Wright of Heidman, Redmond, Fredregill, Patterson, Plaza & Dykstra, L.L.P., Sioux City, for appellee.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

STREIT, P.J.

James and Jeanine Hankins appeal from the district court's ruling dismissing their tort action against Joseph Bukovich because of failure to timely serve Bukovich with original notice. The trial court ruled a delay of 144 days was presumptively abusive and the Hankins failed to show justification for the delay. Because the trial court did not abuse its discretion in dismissing the petition, we affirm.

I. Background Facts & Proceedings.

Plaintiffs, James and Jeanine Hankins, filed a petition on November 6, 1997, asserting a personal injury/negligence claim against defendant, Joseph Bukovich. The petition was filed shortly before the statute of limitations ran on their claim. Service of Mr. Bukovich was handled by a professional process serving company, Intra-Lex. Intra-Lex unsuccessfully attempted to serve Mr. Bukovich at his last known address on four occasions in early November 1997. After getting Bukovich's address from his insurer, Hankins served Bukovich on March 30, 1998. Bukovich sought to dismiss the petition because of the delay in the service of process. The district court agreed and dismissed the petition.

II. Standard of Review.

Our review of a motion to dismiss on legal grounds is for correction of errors at law. *McCormick v. Meyer*, 582 N.W.2d 141, 144 (Iowa 1998). The district court's factual findings regarding the grounds for such dismissal are reviewed for substantial evidence. *Dennis v. Christianson*, 482 N.W.2d 448, 450 (Iowa 1992).

III. The Presumptively Abusive Delay Was Unjustified.

A district court shall dismiss a claim for abusive delay in service of process if the delay was presumptively abusive and the plaintiff fails to show adequate justification for delay. *Alvarez v. Meadow Lane Mall, Ltd.*, 560 N.W.2d 588, 591 (Iowa 1997). At the time of the petition's filing, a delay in excess of 120 days triggered the presumption of abusive delay under Iowa Rule of Civil Procedure 49.[1] *Id.* The Hankins delayed 144 days before serving Mr. Bukovich, undisputedly triggering the presumption. Thus, the burden rested squarely on the Hankins to show adequate justification for the delay.

Justification for delay in service of process parallels the traditional notion of good cause. *McCormick*, 582 N.W.2d at 145. Failure to show good cause generally includes neglect and half-hearted attempts at service. *Henry v. Shober*, 566 N.W.2d 190, 192 (Iowa 1997). The Hankins' attempts at service were half-hearted. In a week's time, the Hankins attempted four times to serve process at Mr. Bukovich's last known residence. Eighty-two days later, the Hankins called the defendant's insurer for his current address. They waited an additional thirty days for a return call from the insurance company. Bukovich made no attempt to conceal himself during his moves, left forwarding addresses with the post office, and his mother continues to live at the address visited by the Hankins' process server. These efforts fail to meet the

[1]In 1998 the Iowa Supreme Court amended rule 49, changing the presumption from 120 days to 90 days. Iowa R. Civ. P. 49(f).

Hankins' burden of showing adequate justification for delay. The district court's dismissal of the claim for abusive delay in the service of original notice is affirmed.

AFFIRMED.