**IN THE COURT OF APPEALS OF IOWA**

No. 0-424 / 99-1626
Filed September 13, 2000

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CLERK SUPREME COURT

**ALVIN F. LANGFELDT and MARY LANGFELDT,**
Plaintiffs-Appellants,

**vs.**

**GENESIS MEDICAL CENTER,**
Defendant-Appellee.

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Appeal from the Iowa District Court for Scott County, David H. Sivright, Jr., Judge.

Alvin and Mary Langfeldt appeal the district court's order dismissing their medical malpractice case against Genesis Medical Center for lack of service. **AFFIRMED.**

Mark F. Cyr of the Law Office of Mark F. Cyr, P.C., Rock Island, Illinois, for appellants.

Charles E. Miller and Troy A. Howell of Lane & Waterman, Davenport, for appellee.

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

**HUITINK, P.J.**

***I. Background Facts and Proceedings.***

This is the second lawsuit Alvin and Mary Langfeldt filed against Genesis Medical Center. Both are premised on allegations of medical negligence and resulting injury to Alvin while he was undergoing treatment at Genesis in July 1995. Langfeldts' first lawsuit was filed on July 3, 1997. Genesis's motion to dismiss Langfeldts' claims based on a 117-day delay in service of the required original notice was denied. After the district court also denied Langfeldts' motion to sever their claims against Genesis from that made against Alvin's treating physician, Langfeldts voluntarily dismissed their claim against Genesis.

The second lawsuit resulting in these proceedings was filed on January 28, 1999. On June 17, 1999, Genesis moved to dismiss citing Langfeldts' failure, without good cause, to serve Genesis with an original notice within the time required. Langfeldts conceded failure to serve the original notice as required but claimed ongoing settlement negotiations with counsel for Genesis provided good cause for their failure to do so.

The district court rejected Langfeldts' good cause theory stating:

> In this case, Genesis, its insurer, and its attorneys were aware of the Langfeldts' claims as the result of the first lawsuit. Its attorney was furnished a copy of the second lawsuit when it was filed. The Court infers defendant and its insurer were able to timely investigate the claim and prepare its defense. Nonetheless, plaintiffs have failed to show good cause for their failure to serve defendant in this action as required by amended Rule 49(f). The efforts to mediate settlement with Dr. Collins, and thereafter initiate settlement negotiations or mediation of the claim against Genesis, is not a sufficient reason for delaying service. . . . In addition, it was not defense counsel's duty or obligation to request "formal" service of process upon Genesis.

Genesis's motion to dismiss was accordingly granted.

On appeal, the Langfeldts contend the district court erred in dismissing their claim. They argue the record demonstrates good cause for their failure to timely serve an original notice. They also argue the delay in service of the original notice did not prejudice Genesis.

***II. Standard of Review.***

We review the district court's granting of a motion to dismiss for errors of law. *Sandford v. Mantemach*, 601 N.W.2d 360, 363 (Iowa 1999).

***III. The Merits.***

Iowa Rule of Civil Procedure 49(f) provides:

> If service of the original notice is not made upon the defendant, respondent, or other party to be served within 90 days after filing the petition, the court, upon motion or its own initiative after notice to the party filing the petition, shall dismiss the action without prejudice as to that defendant, respondent, or other party to be served or direct an alternate time or manner of service. If the party filing the papers shows good cause for the failure of service, the court shall extend the time for service for an appropriate period.

Good cause means:

> [t]he plaintiff must have 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.

*Henry v. Shober*, 566 N.W.2d 190, 192-93 (Iowa 1997). A lengthy delay in service is also indicative of a plaintiff who has filed a petition "not to seriously institute litigation, but rather to 'ice' the statute of limitations for a later

determination on whether to proceed with suit." *Alvarez v. Meadow Lane Mall Ltd. Partnership*, 560 N.W.2d 588, 591 (Iowa 1997).

Applying these principles to the undisputed facts in this case, we find the district court properly concluded the Langfeldts' failure to serve an original notice for 140 days was presumptively abusive. *Cf. Turnbull v. Horan*, 522 N.W.2d 860, 861 (Iowa App. 1994) (finding a 126-day delay in service presumptively abusive). We, like the district court, also conclude the Langfeldts failed to show adequate justification for the delay. Settlement negotiations, even if done in good faith, do not constitute adequate justification or good cause for delaying service. *Henry*, 566 N.W.2d at 193.

Finally, we reject Langfeldts' argument that the delay in service did not prejudice Genesis. The point is not whether Genesis suffered prejudice from the delay in service or whether the delay was intentional, but rather whether the Langfeldts can show justification for the delay. *Mokhtarian v. GTE Midwest Inc.*, 578 N.W.2d 666, 669 (Iowa 1998). We additionally note that notice of the possibility of a lawsuit is not sufficient; the party being sued must be served with an original notice as required by our rules of civil procedure. *Id.*

The Langfeldts have failed to sustain their burden of showing "good cause" for their failure to comply with Iowa Rule of Civil Procedure 49(f). The district court's dismissal of Langfeldts' lawsuit against Genesis is affirmed.

**AFFIRMED.**