

IN THE COURT OF APPEALS OF IOWA

No. 8-128 / 96-2112

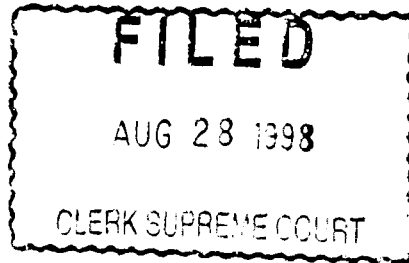
DONALD A. TANG,

Plaintiff-Appellant,

vs.

**ROSEANN STRAND and
ANTHONY STRAND,**

Defendants-Appellees.



Appeal from the Iowa District Court for Johnson County, August F. Honnell,
Judge.

Plaintiff appeals from the district court's ruling dismissing his tort action
against defendants. **AFFIRMED.**

Steven Lawyer of Lawyer, Lawyer & Associates, Des Moines, for appellant.

Matthew J. Nagle and Susan H. Sibert of Lynch, Dallas, Smith & Harman,
P.C., Cedar Rapids, for appellees.

Considered by Cady, C.J., and Streit and Mahan, JJ.

MAHAN, J.

Donald Tang appeals the dismissal of his tort action. He alleges the district court erred when it dismissed the action for failure to conduct a reasonable inquiry under Rule 60.1. We affirm.

Tang filed this action on January 16, 1996. The Johnson County Sheriff attempted personal service, but alleged he was unable to locate Roseann Strand. Return of service was filed on February 12, 1996. The return of service contained a comment, "Postal Information shows c/o Leonard Napierala, Route 4 186D, Misson, Texas 78572." On February 23, Tang applied for permission to serve by publication. An affidavit by Deputy Sheriff Dave Welsh accompanied the application. In the affidavit Welsh stated, "The post office was contacted for addresses and forwarding addresses. No addresses or forwarding addresses for the persons with those names were found." The court authorized service by publication. The publications appeared in the *Iowa City Press-Citizen* on March 25, April 1, and April 8, 1996.

On September 11, Roseann Strand filed a motion to dismiss pursuant to Iowa Rule of Civil Procedure 104 alleging lack of personal jurisdiction and insufficiency of service of process. The district court ruled in favor of the Strands and dismissed the action, stating:

Plaintiff's counsel had the name and address of a person to which the notice could have been sent as mandated by Iowa Rule of Civil Procedure 60.1 and the notice was not sent to the Defendants or either of them in care of the named person on the return of service. Therefore, it cannot be said that diligent inquiry was had, the outcome

being that no mailing address was known. For the foregoing reason, the Motion to Dismiss is sustained.

In *Berger v. General United Group, Inc.*, the supreme court held:

Our review of a ruling on a motion to dismiss is limited. We cannot sustain such a motion on grounds not asserted in trial court. However, if any ground asserted in the motion is good, a ruling sustaining the motion will be affirmed even though the ground the trial court relied on to make its ruling was not good.

Berger v. General United Group, Inc., 268 N.W.2d 630, 635 (Iowa 1978).

Strand's motion stated a diligent inquiry would have reasonably included an attempt to ascertain her forwarding address so service of process could have been performed pursuant to Iowa Rules of Civil Procedure 56.1 or 56.2. Strand further pointed out the return of service specifically listed her forwarding address.

A diligent search is measured not by the quantity of the search but the quality of the search. *Qualley v. State Federal Sav. & Loan*, 487 N.W.2d 353, 355 (Iowa App. 1992). While a reasonable search does not require the use of all possible or conceivable means of discovery, it is an inquiry a reasonable person would make, and it must extend to places where information is likely to be obtained and to persons who, in the ordinary course of events, would be likely to have information of the person or entity sought. *Id.*

Welsh's affidavit specifically stated he attempted service at 10 Norwood Circle, Iowa City, Iowa, and the post office did not have a forwarding address. However, the return of service in the court file specifically stated an address for

Strand's father in Texas. We find the original order of the district court incorrectly allowed service by publication. Tang had not conducted a reasonable inquiry and cannot be heard to complain he relied on the district court's authorization of service by publication. At the time he applied for permission to serve by publication, he knew or should have known of a possible forwarding address as set out in the return of service. The information set forth in Welsh's affidavit, whether intentional or not, was misleading to the court. The motion to dismiss was properly sustained.

Sufficient service was not served on Strand eight months after the filing of the petition. This delay was caused by Tang's lack of due diligence in searching for Strand. Therefore, we find the action should be dismissed. *See Turnbull v. Horan*, 522 N.W.2d 860, 861 (Iowa App. 1994); *see also Qualley*, 487 N.W.2d at 355-57 (contract forfeiture set aside because search was not diligent).

For these reasons, we affirm the result of the district court.

AFFIRMED.