

IN THE COURT OF APPEALS OF IOWA

No. 0-626 / 09-1842
Filed October 6, 2010

SAMUEL H. CLARK,
Plaintiff-Appellant,

vs.

CHRISTOPHER PHIPPS,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Marsha Bergan,
Judge.

Plaintiff appeals from the district court's order dismissing the case for
failure to timely serve defendant. **AFFIRMED.**

Michael W. Fay, Cedar Rapids, for appellant.

Ted J. Wallace, Davenport, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

DANILSON, J.

Samuel Clark filed a petition against Christopher Phipps on June 19, 2006. On October 12, 2006, which is more than ninety days from the filing of the petition, an order was filed notifying Clark that there being no return of service on file, the case would be dismissed without prejudice on November 13, 2006.

On November 9, 2006, Clark filed an application for extension of time in which to perform service, asserting (1) plaintiff's process server had served a Christopher Phipps, but not the correct one and noting additional efforts to locate Phipps, and (2) the plaintiff intended to obtain service by publication. That same date, the district court granted an addition sixty days to serve defendant by publication (January 8, 2007).

No proof of service was filed by January 8, 2007, and on January 22, 2007, the court dismissed the case without prejudice.

On January 30, 2007, Clark filed an application to reinstate, asserting "inadvertence" in failing to serve defendant by publication. That same date, the court ordered the case reinstated and granted an additional sixty days to serve defendant by publication. A notice of service by publication was filed with the court on March 19, 2007.

On March 27, 2009, defendant filed a motion to dismiss asserting inadvertence alone is not grounds for good cause. The district court denied the motion to dismiss, and defendant's application for interlocutory appeal was denied.¹

¹ Clark argues that the former rulings by other district court judges somehow preclude our review. "Until trial . . . is completed and a final order or decree rendered,

On May 19, 2008, defendant filed a renewed motion to dismiss. On November 3, 2009, the district court granted the motion to dismiss finding “inadvertence” does not constitute good cause for delay in service beyond the sixty-day extension granted for service by publication.

We review motions to dismiss for correction of errors at law. *Crall v. Davis*, 714 N.W.2d 616, 619 (Iowa 2006). Here, even if we disregard the fact that the plaintiff failed to complete service within ninety days of filing the petition, and if we assume that the plaintiff had good cause for the sixty-day extension to complete service, the plaintiff failed to complete service within the sixty-day extension period. Further, after the action was dismissed by the order filed January 27, 2007, the plaintiff’s application for reinstatement failed to allege any new facts stating why he was unable to complete service during the sixty-day extension period other than to admit service was not completed due to “inadvertance.”²

Plaintiff offers no reason other than inadvertence for failing to serve defendant within the sixty-day extension granted for service by publication. The district court did not err in concluding there was not good cause for the delay of service following the grant of an extension, and we therefore affirm. See Iowa R. Civ. P. 1.302(5) (requiring service of original notice within ninety days after filing, but allowing extension of time for good cause); *Brubaker v. Estate of DeLong*,

the trial court will have the power to correct any of the rulings, orders, or partial summary judgments it has already entered.” *Mason City Prod. Credit Ass’n v. Van Duzer*, 376 N.W.2d 882, 885-86 (Iowa 1985). In any event, the district court’s application of legal principles and conclusions of law are not binding on appeal. See *Carroll v. Martir*, 610 N.W.2d 850, 857 (Iowa 2000).

² We observe, as did the district court, that the only other fact alleged in the application for reinstatement was that the plaintiff had served the wrong party, but this fact was the basis, in part, for the original extension.

700 N.W.2d 323, 327 (Iowa 2005) (finding “inadvertence, neglect, and half-hearted attempts to obtain service” following grant of extension insufficient to establish good cause for delay in service); see also *Crall*, 714 N.W.2d at 621 (affirming dismissal where plaintiffs did not serve defendant or timely move for an extension within ninety days); *Meier v. Senecaut*, 641 N.W.2d 532, 542-43 (Iowa 2002) (noting in good cause analysis a lapse of time when no service attempts were made and no satisfactory explanation given for the delay).

AFFIRMED.