IN THE COURT OF APPEALS OF IOWA

No. 1-1007 / 11-1394
Filed February 1, 2012

SHAREE RUCKER,
Plaintiff-Appellee,

vs.

MIKE TAYLOR and
SHERIE TAYLOR,
Defendants-Appellants.

Appeal from the Iowa District Court for Black Hawk County, David F. Staudt, Judge.

The defendants appeal the district court denial of their motion to dismiss based upon the plaintiff's failure to serve them within ninety days. **AFFIRMED.**

Sarah M. Kouri of the Law Office of Scott J. Idleman, Des Moines, for appellants.

Hugh M. Field and Kate B. Mitchell of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellee.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

On January 15, 2009, Sharee Rucker and Mike and Sherie Taylor were involved in a motor vehicle accident. The parties entered into settlement negotiations, which were evidenced by numerous communications between Rucker's attorney and the Taylors' insurance company. On December 29, 2010, Rucker filed suit against the Taylors. Her attorney sent a letter to the insurance company that stated:

> We are filing the enclosed Petition at Law for the above mentioned, but will wait to serve it until our negotiations break down. I will give you 21 days thereafter to seek counsel and defend.
>
> I don't see any reason why we shouldn't be able to work out a settlement.

Although negotiations between the parties continued for a few months, ultimately the parties could not come to agreement. Rucker then had the Taylors served with original notice on April 11 and 12, 2011.

The Taylors filed a pre-answer motion to dismiss, arguing they had not been served with original notice within ninety days as required by Iowa Rule of Civil Procedure 1.302(5). A hearing was held, after which the district issued its ruling, stating:

> The court finds that good cause exists for Plaintiff's failure to serve Defendants with notice of the lawsuit. The court finds that good cause, in this case, as the claims representative took advantage of the Plaintiff's straightforward offer to hold off serving the notice of the lawsuit in return for the exchange of additional information and continued settlement negotiations. From the affidavits and the arguments of counsel, it appears to the court Plaintiff's attorney clearly was operating under the assumption that by continuing to correspond, negotiate, and exchange documentation, Plaintiff's counsel believed the Allied claims

> representative had accepted and/or acquiesced in Plaintiff's offer to hold off service pending negotiations.

Thus, the district court denied the Taylors' motion. The Taylors applied for an interlocutory appeal, and our supreme court granted their application and transferred the case to this court.

Our review is for correction of errors at law. *Wilson v. Ribbens*, 678 N.W.2d 417, 418 (Iowa 2004). "Where the district court makes findings of fact, those findings are binding upon us so long as they are supported by substantial evidence." *Id*. We are not, however, bound by the district court's legal conclusions or application thereof. *Id.*

Iowa Rule of Civil Procedure 1.302(5) provides,

> If service of the original notice is not made upon the defendant . . . within 90 days after filing the petition, the court . . . shall dismiss the action without prejudice . . . 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.

See also id. at 420. When, as here, there is no service within ninety days and no order extending time for service, the only issue is whether the plaintiffs have "shown justification for the delay." *See Crall v. Davis*, 714 N.W.2d 616, 620 (Iowa 2006). "The standard we employ in determining such justification is 'good cause.'" *Id.* While "good-faith settlement negotiations standing alone do not constitute good cause for delays in service beyond the ninety-day limit," an agreement to delay service while settlement negotiations continue may constitute good cause. *Wilson*, 678 N.W.2d at 422.

The Taylors argue there was not good cause because there was not an "explicit agreement to delay service." The petition was filed before expiration of the statute of limitations. When it was filed, the plaintiff's attorney sent a letter to the insurance agent that notified him of the filing and informed him the petition would not be served on the Taylors unless negotiations broke down, and attached a copy of the petition. The insurance agent did not directly respond to the letter, but he did respond to the plaintiff's attorney with a letter requesting medical records from two different doctors, and communications continued. While there was not an explicit agreement, the insurance agent's conduct was misleading. *See id.* at 421 (explaining that good cause is likely to be found where, among other factors, the defendant has engaged in misleading conduct). Furthermore, when it became clear the parties could not reach an agreement, the Taylors were served with notice 103 and 104 days after the petition was filed. While the Taylors were not timely served with notice, the delay was only thirteen and fourteen days. Given these circumstances, we affirm the district court's finding of good cause.

AFFIRMED.