

**IN THE COURT OF APPEALS OF IOWA**

No. 3-668 / 12-1175  
Filed August 7, 2013

**KRISTINE HOBERT,**  
Plaintiff-Appellant,

**vs.**

**RYAN W. MARSHALL,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,  
Judge.

Hobert appeals from the district court's dismissal of her petition for failure  
to timely serve. **AFFIRMED.**

Geoffrey P. Campbell, Rock Island, Illinois, for appellant.

Brian T. Fairfield of Brooks Law Firm, P.C., Davenport, for appellee.

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

**VOGEL, P.J.**

The original petition in this case, pertaining to injuries arising out of a car accident, was filed by plaintiff Kristine Hobert on October 19, 2011. On several occasions from November 2011 until April 2012, Hobert attempted to serve defendant, Ryan Marshall, but was unable to locate him to properly effect service.<sup>1</sup> On April 12, 2012, 176 days after the filing of the petition, Hobert filed an ex parte motion seeking an extension of time, claiming good cause existed for the delay. In support of this motion, an affidavit was submitted, which noted the efforts counsel underwent in attempting to effectuate service. The Honorable Senior District Court Judge J. Hobart Darbyshire granted the motion, allowing thirty additional days. Marshall was served during this time period, on April 16, 2012.

On April 26, 2012, having retained counsel, Marshall moved to dismiss the action for failure to serve within ninety days of the filing of the petition, pursuant to Iowa Rule of Civil Procedure 1.302(5). The Honorable Gary McKerrick granted Marshall's motion, finding good cause did not exist for the delay in service. Specifically, the district court noted from December 21, at which time the law firm currently representing Hobert filed an appearance, until January, no efforts were undertaken to effectuate service or to obtain an extension of time. A brief effort was made by Hobert herself around February 28, 2012, but then, from that point until April 4, 2012, no further attempts were made to serve Marshall or

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<sup>1</sup> Hobert's legal representation changed three times during this period. Elizabeth Cervantes represented Hobert from October 2011 until December 6, 2011. Michael Dergo, from the VanDerGinst law firm, was then retained, and entered an appearance on December 20, 2011. Dennis VanDerGinst, of the same firm, entered his appearance on February 28, 2012, and Dergo was allowed to withdraw on March 20, 2012.

file a motion for extension of time. Furthermore, the request for an extension of time was not filed until 176 days after the filing of the petition. As such, the court granted Marshall's motion and dismissed the action without prejudice.

Hobert presents two arguments on appeal. First, she contends it was improper for the second district court judge to dismiss her petition after the first judge granted an extension of time to serve notice. Second, she argues good cause existed for the delay.

We review an order to dismiss for failure to effect service for errors at law. *Palmer v. Hofman*, 745 N.W.2d 745, 746 (Iowa Ct. App. 2008). We are bound by the district court's factual findings as long as they are supported by substantial evidence, such that "a reasonable mind would accept it as adequate to reach a conclusion." *Crall v. Davis*, 714 N.W.2d 616, 619 (Iowa 2006) (internal citations omitted).

As to Hobert's first allegation, she failed to preserve error on appeal. While Hobert vaguely argued the appropriateness of the district court's grant of an extension of time in her response to Marshall's motion to dismiss, she did not present the same argument she now asserts on appeal, namely, whether it was proper under Iowa Rule of Civil Procedure 1.302(5) for the district court to dismiss her petition, after having been granted a thirty-day extension by another district court judge. Hobert concedes in her brief the district court did not address this issue, and she failed to file a rule 1.904(2) motion to amend or enlarge the ruling. Therefore, we find error was not preserved. See *Lamasters v. State*, 821 N.W.2d 856, 863–64 (Iowa 2012) (stating failure of the district court to address

an issue, then subsequent failure of the party to file a motion to amend or enlarge, results in a failure to preserve error).

As to Hobert's second claim that good cause existed for the delay in service, substantial evidence in the record supports the district court's factual findings. The decision accurately cites the facts laid out in the affidavit supporting the motion for extension of time, but concludes those facts do not support a "good cause" finding. We agree, and therefore affirm the dismissal of Hobert's action pursuant to Iowa Court Rules 21.26(1)(a) and (d).

**AFFIRMED.**