IN THE COURT OF APPEALS OF IOWA

No. 6-1016 / 05-2126
Filed January 18, 2007

GREG ROTTINGHAUS,
Plaintiff-Appellant,

vs.

JAMIE JO ALLPRESS,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

Plaintiff appeals from the district court's order dismissing his petition. **AFFIRMED.**

Michael P. Holzworth and Jeanne K. Johnson, Des Moines, for appellant.

Sharon Soorholtz Greer of Cartright, Drucker & Ryden, Marshalltown, for appellee.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

HUITINK, P.J.

Greg Rottinghaus filed a petition at law and original notice against Jaime Jo Allpress in Polk County on May 26, 2005, alleging Allpress's negligence in conjunction with a motor vehicle accident that occurred on May 28, 2003. A lawsuit arising out of the same accident was pending in Polk County at the time Rottinghaus filed his petition. Rottinghaus knew Allpress had counsel in the pending lawsuit.

On August 25, 2005, after the ninety-day period for service had expired, *see* Iowa Rule of Civil Procedure 1.302(5), the case came before the district court for an order setting scheduling conference pursuant to the time standards for case processing. The court entered an "Order re: Setting Deadline for Service of Process," notifying Rottinghaus,

> In an effort to comply with the time standards, the court therefore notifies plaintiff(s) that this case will be dismissed, without prejudice, under Iowa Rule of Civil Procedure 1.302(5), on September 29, 2005 unless the party filing the petition applies to the court for an extension, in compliance with rule 1.302(5).

Rottinghaus received the order on August 29, 2005. He never sought an extension. The process server received the petition and original notice on September 16, 2005, and served Allpress on September 19, 2005. Allpress was served in Polk County, where she had lived for five years.

On October 13, 2005, Allpress filed a motion to dismiss the petition, arguing that Rottinghaus failed to comply with the service requirements of rule 1.302(5). Rottinghaus resisted. Following a hearing on the motion, the district court entered a ruling dismissing the petition. The court found Rottinghaus failed to show good cause for the failure of service within the ninety-day period

prescribed by rule 1.302(5), noting that "[t]he promptness with which defendant was in fact served, in combination with knowledge of an attorney already representing defendant who might have been contacted to accept service mitigates against a finding of good cause." The court continued,

> It is important to note the court's contribution to the present dispute, for it can be argued that the court, sua sponte, extended the ninety-day deadline by its order of August 25, 2005—an order with which plaintiff's counsel complied. Indeed, it was apparently that order which alerted counsel to the need to expedite service.
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> The court concludes, in retrospect, that it erred by entering that order. As the ninety-day period had expired when the order was entered, it was prejudicial to grant plaintiff relief (additional time to effectuate service) that had not been timely sought. Had the August 25, 2005 order not been improvidently entered, there would be no basis for even disputing the present motion. Whether plaintiff, in promptly responding to that errant order, has demonstrated good cause under the rules might be argued. But such an argument cannot be accepted by this court.
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> The court, in fairness to defendant, must view this record as if the order, improvidently issued, had not been entered and thus grant the motion.

Rottinghaus appeals, arguing the district court erred in dismissing the petition for his alleged failure to comply with rule 1.302(5). We review for correction of errors at law. *Crall v. Davis*, 714 N.W.2d 616, 619 (Iowa 2006). When considering a motion to dismiss for delay of service, we are bound by the district court's factual findings if supported by substantial evidence. *Id.* Evidence is substantial if "a reasonable mind would accept it as adequate to reach a conclusion." *Id.* (citation omitted).

Our supreme court has made it clear that rule 1.302(5) "requires service within ninety days and requires the plaintiff to take affirmative action to obtain an extension or direction from the court if service cannot be accomplished." *Meier v. Senecaut*, 641 N.W.2d 532, 543 (Iowa 2002). Once service has not been

accomplished within the ninety-day period, the rule directs the court to "dismiss the action without prejudice, impose alternative direction for service, or grant extension of time to complete service for an appropriate period of time." *Id.* at 541. "Extension of time requires a showing of good cause." *Id.*

Good cause requires that "the 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." *Crall*, 714 N.W.2d at 620 (citation omitted). It is clear from the record before us that Rottinghaus took no affirmative action to serve Allpress in the ninety days after filing his petition, even though he knew other actions had been commenced against Allpress and that she was represented by counsel. Therefore, even if Rottinghaus had applied for an extension of time under rule 1.302(5), such an extension would not have been forthcoming.

As for the district court's August 25, 2005 ruling, a fair reading of the ruling could lead to the conclusion that the court did not give Rottinghaus a deadline for service, but instead gave him a deadline to apply for an extension pursuant to rule 1.302(5).[1] Rottinghaus failed to file for an extension within the time period prescribed. Even if the ruling did extend the time for service, "[a] party has no vested interest in an erroneous ruling." *Carroll v. Martir*, 610 N.W.2d 850, 857 (Iowa 2000). Until the court has rendered a final order or decree, "it has the power to correct any of the rulings . . . it has entered." *Id.* The district court corrected its August 25 ruling in the ruling on Allpress's motion to dismiss.

[1] We will not address the appropriateness of such an order, as it is unnecessary to do so in order to reach a decision in this case.

Finding no error in the district court's ruling dismissing Rottinghaus's petition, we affirm.

AFFIRMED.