

**IN THE COURT OF APPEALS OF IOWA**

No. 7-620 / 07-0266  
Filed October 12, 2007

**JOHN R. CONDER,**  
Plaintiff-Appellant,

**vs.**

**DARLA DEITCH, STEPHEN T. DEITCH,**  
**and JOYCE DEITCH,**  
Defendants-Appellees.

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Appeal from the Iowa District Court for Wapello County, Dan F. Morrison,  
Judge.

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

**AFFIRMED.**

Barbara J. Diment, West Des Moines, for appellant.

Michael J. Moreland of Harrison, Moreland & Webber, P.C., Ottumwa, for  
appellee.

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

**VOGEL, J.**

John Conder brought a tort claim based upon injuries he received in an auto accident. The petition named Darla Deitch, and Stephen and Joyce Deitch as defendants. Conder failed to serve the defendants within ninety days, eventually completing service 117 days after the petition was filed. The defendants filed a pre-answer motion to dismiss, which was granted based upon the untimely service. Conder appeals from the district court's order dismissing his petition. Because we agree with the district court that Conder did not show good cause for failing to serve the defendants within ninety days, we affirm.

We review motions to dismiss for correction of errors at law. Iowa R. App. P. 6.4; *Crall v. Davis*, 714 N.W.2d 616, 619 (Iowa 2006). When considering a motion to dismiss for delay of service, the district court's factual findings are binding if they are supported by substantial evidence. *Crall*, 714 N.W.2d at 619. Substantial evidence is evidence that "a reasonable mind would accept . . . as adequate to reach a conclusion." *Id.* (quoting *Bus. Consulting Servs., Inc. v. Wicks*, 703 N.W.2d 427, 429 (Iowa 2005) (per curiam)).

Once a plaintiff files a petition in the district court, the plaintiff must serve the defendant with notice of the pending action within ninety days. Iowa R. Civ. P. 1.302; see *Wilson v. Ribbens*, 678 N.W.2d 417, 420 (Iowa 2004). Service of process made after ninety days is presumptively abusive and a plaintiff must show good cause for the delay in service in order to avoid dismissal. Iowa R. Civ. P. 1.302; *Crall*, 714 N.W.2d at 619-20 (citing *Meier v. Senecaut*, 641 N.W.2d 532, 541 (Iowa 2002)). If a plaintiff does not show good cause, the district court is required to dismiss the petition. *Crall*, 714 N.W.2d at 620 ("If there was no

such good cause, the rule required the court to dismiss the action without prejudice”). Good cause requires a showing by the plaintiff that

[t]he 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. Inadvertence, neglect, misunderstanding, ignorance of the rule or its burden, or half-hearted attempts at service have generally been [deemed] insufficient to show good cause.

*Id.* (quoting *Meier*, 641 N.W.2d at 542). In defining good cause, our supreme court further stated:

[G]ood cause is likely (but not always) to be found when the plaintiff’s failure to complete service in timely fashion is a result of the conduct of a third person, typically the process server, the defendant has evaded service of the process or engaged in misleading conduct, the plaintiff has acted diligently in trying to effect service or there are understandable mitigating circumstances.

*Id.* (quoting *Wilson*, 678 N.W.2d at 421).

In the present case, there is no dispute that Conder served the defendants after the ninety-day time period expired. Therefore, the only question before the court is whether Conder demonstrated good cause for the delay in serving the defendants. *Meier*, 641 N.W.2d at 542. The record contains no evidence that Conder attempted to serve the defendants or asked the court for an extension of time to serve the defendants within the ninety days following filing. See *Crall*, 714 N.W.2d at 621 (stating rule 1.302(5) requires the plaintiff to either serve the defendant within ninety days or take affirmative action to obtain an extension or directions from the district court). We agree with the district

court that Conder did not establish good cause to justify the delay in service of process.

Conder asserts that when he filed his petition, he relied on a statement made by the clerk of court that he did not need to have original notice filed when he filed the petition and that he “would have time to have the original notices filed.” The district court correctly determined that “the facts simply do not support [Conder’s] allegations. Nothing in the record suggests that [Conder] spoke with the clerk’s office during the 90-day period.” Furthermore, even if the clerk told Conder that he would have time to serve the defendants, this is a correct statement. Conder did have ninety days to serve the defendants after filing the petition, and he should not have assumed it would be an infinite period of time. A plaintiff is required to act diligently in trying to effect service. *See id.* (discussing that a plaintiff must be diligent in attempting to serve the defendants and a court may consider a lapse of time between service attempts with no explanation for the delay within the ninety-day time period). Conder’s ignorance of the ninety-day requirement is not good cause. *See id.* (finding the plaintiff did not establish good cause where the plaintiff did not offer an explanation for the delay between attempts to served the defendant within the ninety-day time period).

Conder also asserts that his actions after the ninety-day period expired established good cause. After the ninety-day period expired, the clerk of court notified Conder that his “case will be dismissed . . . on the court’s own motion twenty-five days from the date of this notice unless the

moving party shows good cause for the failure of service.” Conder then phoned the clerk of court and was directed to a website with information on how to serve defendants. Conder eventually served the defendants 117 days following the filing of the petition. He also hired an attorney. Essentially, Conder’s argument is that he made no attempt to effectuate service during the ninety-day period, but seeks to excuse this failure because he was mistaken about the ninety-day requirement and did eventually serve the defendants. Again, ignorance of the ninety-day requirement is not good cause. *See, e.g., Mokhtarian v. GTE Midwest Inc.*, 578 N.W.2d 666, 669 (Iowa 1998) (finding the plaintiff did not establish good cause where plaintiff’s counsel believed service could be accomplished by certified mail).

Conder was not prevented from attempting to serve the defendants during the ninety days following filing of the petition. His inadvertence, neglect, misunderstanding, or ignorance of the rule could not excuse his delay. We agree with the district court that the record does not contain substantial evidence to support a good cause finding. Having reviewed all of Conder’s arguments, and finding them to be without merit, we affirm the district court.

**AFFIRMED.**