

**IN THE COURT OF APPEALS OF IOWA**

No. 9-269 / 08-0767

Filed May 6, 2009

**LESLIE COOPER,**  
Plaintiff-Appellant,

**vs.**

**TERRY VENTLING and**  
**WANDA VENTLING,**  
Defendants-Appellees.

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Appeal from the Iowa District Court for Madison County, Peter A. Keller,  
Judge.

Appeal from the district court's dismissal of a petition to vacate or modify a  
judgment. **AFFIRMED.**

James Cook, West Des Moines, for appellant.

Mark Hanson of Whitfield & Eddy, Des Moines, for appellees.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

**SACKETT, C.J.**

Plaintiff-appellant, Leslie Cooper, appeals from the district court's dismissal of her petition to vacate or modify a judgment on the basis that the court did not have jurisdiction. We affirm.

**BACKGROUND.** Cooper filed a petition for declaratory judgment against defendants-appellees, Terry and Wanda Ventling. The district court ruled on the petition on March 12, 2007. On February 18, 2008, Cooper filed a petition to vacate or modify the judgment. The petition showed copies to: Mark Hanson, Esq., Attorney for the Ventlings. Cooper obtained an order setting the matter for hearing on April 4, 2008. The ruling provided that copies of it should be mailed to all parties ten days prior to the hearing. A note on the notice indicates it was sent to Hanson. Hanson, on behalf of Ventlings, filed a "Rule 1.421 Pre-answer Motion," contending the court lacked both subject matter and personal jurisdiction, and there was an insufficiency of service, as well as claiming that Cooper's petition failed to state a cause of action, and asking that the petition be dismissed.

On April 4, 2008, the district court found it had no jurisdiction, as the petition was not filed and served within one year of the ruling that Cooper sought to vacate, and dismissed the petition. On May 8, 2008, Cooper filed a notice of appeal, contending he appealed from "The Ruling regarding plaintiff's petition for declaratory judgment issued March 12, 2007, and subsequent ruling sustaining defendants' pre-answer motion to dismiss the plaintiff's petition to vacate or modify judgment filed April 4, 2008."

The procedure for vacating or modifying judgment is defined in Iowa Rule of Civil Procedure 1.1013, which provides in applicable part:

Rule 1.1013. Procedure for vacating or modifying judgment

A petition for relief under rule 1.1012 [defining the grounds for vacating or modifying judgment] must be filed and served in the original action within one year after the entry of the judgment or order involved. It shall state the grounds for relief, and, if it seeks a new trial, show that they were not and could not have been discovered in time to proceed under rule 1.977 or 1.1004. If the pleadings in the original action did not allege a meritorious action or defense the petition shall do so. It shall be supported by affidavit as provided in rule 1.413(3).

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1.1013(2) Notice. The petitioner must serve the adverse party with an original notice and petition in the manner provided in rules 1.301 through 1.315, located in division III of the rules in this chapter.

There is no evidence that an original notice and petition were served in accordance with rules 1.301 through 1.315 on the Ventlings. Cooper argues that mailing a copy of the petition to the attorney for Ventlings conferred jurisdiction. We disagree. Sending a copy of the petition to the Ventlings' attorney did not meet the service requirements of Iowa Rules of Civil Procedure 1.301 through 1.315. See *In re the Marriage of Meyer*, 285 N.W.2d 10, 10 (Iowa 1979) (sustaining a former husband's special appearance challenge to the court's personal jurisdiction where the only notice was a copy of a notice for hearing mailed to the attorney who represented the former husband in the dissolution matter). The court noted that even if notice is ordered by the court it must be consistent with due process of law. *Id.* at 11. The court held the notice did not afford the former husband an opportunity to appear and resist. *Id.* at 12. The same principles apply here. We affirm the district court's dismissal of the action.

**AFFIRMED.**