IN THE COURT OF APPEALS OF IOWA

No. 9-979 / 09-0806
Filed February 24, 2010

JESSICA J. JORDAN,
Plaintiff-Appellant,

vs.

RAYMOND V. PUTNEY, Driver,
and COLLEN K. FRASCHT,
Individually and as Owner,
Defendants-Appellees.

Appeal from the Iowa District Court for Floyd County, Bryan H. McKinley, Judge.

A plaintiff appeals the district court's dismissal of her lawsuit for failure to timely and properly serve the defendants. **AFFIRMED.**

Roger Sutton of Sutton Law Office, Charles City, for appellant.

Natalie Burris of Swisher & Cohrt, P.L.C., Waterloo, for appellees.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

VAITHESWARAN, J.

Jessica Jordan appeals the district court's dismissal of her lawsuit for failure to timely and properly serve defendants Raymond Putney and Colleen Frascht. She concedes that the deputy sheriff was unable to personally serve the defendants, but contends that she used appropriate alternate means of service in the form of publication and mailing. The problem with her argument is that she did not first obtain court approval for these alternate means of service, as required by Iowa Rule of Civil Procedure 1.306.[1]

Apparently recognizing this omission, Jordan now argues that because the rules of court "govern the practice and procedure in all courts of the state," *see* Iowa R. Civ. P. 1.101, any method of service that is consistent with the rules is "prescribed by order of the court" within the meaning of Rule 1.306. There are several problems with this argument. First, she has not preserved error. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). Second, even if she had preserved error, she has cited no authority to support this reading of the rule. Iowa R. App. P. 6.903(2)(*g*)(3) ("Failure to cite authority in

[1] Rule 1.306 provides in part that

> Service may be made on any such corporation, individual, personal representative, partnership or association as provided in rule 1.305 within or without the state or, if such service cannot be so made, in any manner consistent with due process of law *prescribed by order of the court* in which the action is brought.

(Emphasis added.)

support of an issue may be deemed waiver of that issue."). Finally, such a rule would render the cited language of rule 1.306 redundant.

Jordan also argues that another rule, rule 1.310, authorizes alternate means of service without prior court approval. Again, this argument was not preserved for our review, but even if it had been preserved, the argument would have failed as Jordan did not satisfy the prerequisites for alternate service under that rule. *See* Iowa R. Civ. P. 1.310 (requiring "filing an affidavit that personal service cannot be had on an adverse party" before notice is published); *Swift v. Swift*, 239 Iowa 62, 66, 29 N.W.2d 535, 538 (1948) (concluding that "the published notice here was insufficient to confer jurisdiction" because the affidavit was not filed before notice was published); Iowa R. Civ. P. 1.310(8) (requiring showing of defendant's departure "with intent to delay or defraud creditors, or to avoid service").

We are left with the question of whether Jordan showed good cause for the delay in service. *See* Iowa R. Civ. P. 1.302(5). Jordan does not make an appellate argument on this point. Therefore, she has waived the argument. *See* Iowa R. App. P. 6.903(2)(*g*)(3). In any event, were we to consider the argument on the merits, we would agree with the district court that Jordan "failed to demonstrate good cause."

We conclude the district court did not err in dismissing the petition without prejudice. *Mokhtarian v. GTE Midwest Inc.*, 578 N.W.2d 666, 668 (Iowa 1998) (reviewing ruling on motion to dismiss for errors of law). We further conclude Jordan is not entitled to appellate attorney fees as she requests, even if a fee

award were permissible.

AFFIRMED.