

SUPREME COURT OF ARKANSAS

Henyan v. Peek

359 Ark. 486 (2004) (Ark. 2004) · No. No. 03-1155 · Decided December 2, 2004

SUMMARY

The Arkansas Supreme Court held that, under Arkansas Rule of Civil Procedure 4(i), a plaintiff seeking an extension of the 120-day service period must make a showing of good cause before the extension is granted. The court affirmed setting aside prior extensions and dismissing the medical-malpractice action because the plaintiffs' extension motions stated no cause and their later explanation was insufficient to cure the omission. The dismissal was with prejudice because the plaintiffs had previously taken a voluntary nonsuit.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Donald L. Corbin, Justice
JURISDICTION	Arkansas
DECIDED	December 2, 2004
DOCKET	No. 03-1155
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Pulaski County Circuit Court order setting aside two orders extending the time for service of process, denying a third extension, and dismissing the medical-malpractice action with prejudice. The Arkansas Court of Appeals certified the case to the Arkansas Supreme Court for interpretation and further development of the Arkansas Rules of Civil Procedure.
STANDARD OF REVIEW	De novo review of issues involving statutory and court-rule interpretation; the appellate court is not bound by the trial court's interpretation of the law. Arguments not raised below, and issues on which the appellant failed to obtain a ruling, are procedurally barred.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential
PARTIES	Louise A. Henyan, Robert A. Henyan v. Richard D. Peek, M.D., Mark R. Gibbs, M.D.

TOPICS

service of process

civil procedure

appellate procedure

statutory interpretation

preservation of error

PRACTICE AREAS

civil procedure

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medical malpractice

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QUESTIONS PRESENTED

1. Whether Arkansas Rule of Civil Procedure 4(i) requires a plaintiff to show good cause before the trial court grants an extension of the 120-day period for service of process.
2. Whether appellants could rely on extension orders that were later set aside despite their failure to show good cause in the extension motions.
3. Whether dismissal for failure to serve valid process was properly entered with prejudice because appellants had previously taken a voluntary nonsuit.

HOLDINGS

1. To obtain an extension of the 120-day period for service under Arkansas Rule of Civil Procedure 4(i), a plaintiff must timely file the extension motion and make a showing of good cause before the court grants the extension.
2. The court would not consider appellants' reliance argument because it was not clearly raised below and the trial court did not rule on it.
3. The dismissal was properly entered with prejudice because appellants had previously taken a voluntary nonsuit.

KEY QUOTATIONS

“Thus, King demonstrates that two things are required by Rule 4(i) to obtain an extension of the period for service: (1) the timely filing of motion for extension, and (2) a showing of good cause.” (54)

“As such, it will not suffice, as Appellants urge, for good cause to be offered after the fact to justify an extension that has already been granted.” (55)

“We thus affirm the trial court's judgment setting aside the prior orders of extension and dismissing with prejudice Appellants' complaint.” (56)

FACTUAL BACKGROUND

Louise and Robert Henyan filed a medical-malpractice complaint on November 5, 2002, giving them 120 days to serve the defendants under Arkansas Rule of Civil Procedure 4(i). They obtained two extensions of the service period, but neither motion stated a reason or showed good cause. Dr. Peek was served before the second extension expired, while Dr. Gibbs was served one day after it expired; appellants later asserted that difficulty obtaining a file-marked complaint and Dr. Gibbs's absence explained the delay.

PROCEDURAL HISTORY

Appellants filed a medical-malpractice complaint and obtained two extensions of the 120-day service period under Arkansas Rule of Civil Procedure 4(i), without showing good cause in either motion. Dr. Peek was served during the second extension, but Dr. Gibbs was served one day after it expired. The circuit court set aside the prior extensions, denied a third extension, and dismissed the complaint with prejudice because appellants had not shown good cause contemporaneously with their extension motions. The Supreme Court of Arkansas affirmed.

DISPOSITION

affirmed

CASES CITED

- Smith v. Sidney Moncrief Pontiac, Buick, GMC Co., 353 Ark. 701, 120 S.W.3d 525 (2003)
- Kangas v. Neely, 346 Ark. 334, 57 S.W.3d 694 (2001)
- Raymond v. Raymond, 343 Ark. 480, 36 S.W.3d 733 (2001)
- Southeast Foods, Inc. v. Keener, 335 Ark. 209, 979 S.W.2d 885 (1998)
- King v. Carney, 341 Ark. 955, 20 S.W.3d 341 (2000)
- Barnett v. Howard, 353 Ark. 756, 120 S.W.3d 564 (2003)
- Bell v. Bershears, 351 Ark. 260, 92 S.W.3d 32 (2002)
- Ford Motor Co. v. Arkansas Motor Vehicle Comm'n, 357 Ark. 125, 161 S.W.3d 788 (2004)
- South Beach Bev. Co., Inc. v. Harris Brands, Inc., 355 Ark. 347, 138 S.W.3d 102 (2003)
- South Cent. Ark. Elec. Coop. v. Buck, 354 Ark. 11, 117 S.W.3d 591 (2003)
- Scamardo v. Jagers, 356 Ark. 236, 149 S.W.3d 311 (2004)
- Finagin v. Arkansas Dev. Fin. Auth., 355 Ark. 440, 139 S.W.3d 797 (2003)
- Bakker v. Ralston, 326 Ark. 575, 932 S.W.2d 325 (1996)