

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

J. ROBERT LANGAN; RUNNY
RUN L.C.; and G & L GOLF, L.L.C.,

Plaintiffs,

Case No. 13-09208-CBB

vs.

HON. CHRISTOPHER P. YATES

TODD GERHART; and
KATHLEEN LOUISE GORTON,

Defendants.

ORDER DENYING PLAINTIFFS' MOTION TO SET ASIDE DISMISSAL FOR NON-SERVICE

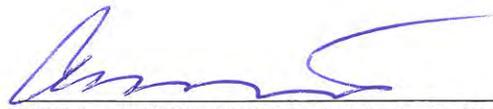
The Clerk of the Court dismissed this action without prejudice shortly after the action was filed, and the plaintiffs now request that the Court set aside the dismissal pursuant to MCR 2.102(F). When a plaintiff files a complaint, the clerk's office must issue a summons to be served on the defendants. See MCR 2.102(A). That summons expires by its own terms within 91 days. See MCR 2.102(D). If the plaintiff does not serve the summons and complaint upon the defendants within that 91-day period, the Clerk of the Court must enter an order dismissing the case without prejudice. See MCR 2.102(E). Here, the plaintiffs filed their complaint and obtained a summons on September 27, 2013, and that summons expired on December 27, 2013. Thus, the clerk's office properly followed the mandates of the Michigan Court Rules when it dismissed this action on January 3, 2014, in the absence of a proof of service indicating that the plaintiffs had successfully served the complaint upon the defendants.

The Michigan Court Rules permit the Court to set aside such a dismissal, however, if three conditions are met: (1) the plaintiffs served the defendants within the time permitted by the summons; (2) the plaintiffs either filed, or had good cause for failing to file, a proof of service; and (3) the plaintiffs

filed their motion to set aside the dismissal within 28 days of the date of dismissal. See MCR 2.102(F). Here, the plaintiffs provided proof that they served the defendants with the complaint on December 17, 2013, which was within the time period afforded by the summons, see Plaintiffs' Motion to Set Aside Dismissal for Non-Service, Exhibit B (Proof of Service), but they failed to file their proof of service with the Court within the time permitted by the summons.* At a hearing on this motion, the plaintiffs explained that the holidays caused a delay in filing the proof of service, but “negligence of either the attorney or the litigant is not normally grounds for” good cause. See Shawl v Spence Bros, Inc, 280 Mich App 213, 223 (2008). Consequently, the plaintiffs have failed to satisfy all of the requirements of MCR 2.102(F), so the Court must deny their motion to set aside the dismissal for non-service.

IT IS SO ORDERED.

Dated: January 31, 2014


HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

* The plaintiffs filed a paper copy of the proof of service on January 6, 2014, see Plaintiffs' Supplemental Brief in Support of Motion to Set Aside the Court's Dismissal for Non-Service, Exhibit A, which was rejected because it was not filed through the electronic filing system. Id., Exhibit B. Even if the paper copy of the proof of service had been accepted, however, it was nevertheless filed well after the time permitted by the summons and three days after the clerk's office entered the dismissal for non-service.