2018 IL App (1st) 171903-U
Order filed: August 3, 2018

FIRST DISTRICT
FIFTH DIVISION

No. 1-17-1903

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SALIMA JIWANI, Individually and as Special Administrator of the Estate of NIZAR JIWANI, Deceased,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 14 L 10996
REHABILITATION INSTITUTE OF CHICAGO; SAMMAN SHAHPAR, M.D.; ALEKSANDAR VIDENOVIC, M.D.; MICHAEL ZOST, O.D.; STEPHANIE A. JOE, M.D.; BOAZ AVITALL, M.D.; K. LOPEZ, R.N.; D. DELACUESTA, R.N.; and L. HATCH, R.N.,	)	
Defendants	)	Honorable Larry G. Axelrood,
(Ali Sovari, M.D., Defendant-Appellee).	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirmed the judgment of the circuit court where it acted within its discretion in granting the motion of defendant-appellee to dismiss, with prejudice, the

complaint of plaintiff-appellant for lack of diligence in obtaining service pursuant to Illinois Supreme Court Rule 103(b) (eff. July 1, 2007).

¶ 2 In 2014, plaintiff-appellant, Salima Jiwani, individually and as special administrator of the estate of her husband, Nizar Jiwani (the decedent), filed a complaint for wrongful death based on medical malpractice against the Rehabilitation Institute of Chicago (RIC) and several doctors and nurses who treated the decedent just prior to his death in 2012. The circuit court granted the motion of defendant-appellee, Ali Sovari, M.D., to dismiss, with prejudice, the claim against him pursuant to Illinois Supreme Court Rule 103(b) (eff. July 1, 2007), for lack of due diligence in effectuating service of process. Plaintiff argues that the circuit court erred in its application of the relevant factors set forth in *Segal v. Sacco*, 136 Ill. 2d 282 (1990). We affirm.

¶ 3 BACKGROUND

¶ 4 The decedent was treated at RIC beginning in September 2012, and was transferred in November 2012 to the University of Illinois at Chicago Medical Center (UIC), where he was treated by Dr. Sovari. The decedent died on November 21, 2012.

¶ 5 On October 23, 2014, plaintiff filed a five-count wrongful death complaint against defendants. Count IV of the complaint named Dr. Sovari and Dr. Boaz Avitall as defendants and charged them with negligence in their care of the decedent. The statute of limitations for this action expired on November 21, 2014. See 735 ILCS 5/13-212 (West 2010) (statute of limitations for physicians or hospitals is two years from the date on which the cause of action accrued).

¶ 6 We set forth only the facts relevant to the service of plaintiff's summons and complaint on Dr. Sovari, and to the issue of whether plaintiff exercised due diligence in obtaining that

service.

¶ 7 On October 24, 2014 (the day after the complaint was filed), an initial summons was issued for Dr. Sovari at Presidential Towers, 605 West Madison Street, Apt. 4612, in Chicago (Presidential Towers). The Cook County sheriff's affidavit states that service was unsuccessful on October 29, 2014, because "per Presidential Tower[s] management, [defendant] is no longer a tenant." This summons was returned on November 1, 2014.

¶ 8 Following two case management conferences with the circuit court, on November 4, 2014, and January 14, 2015, plaintiff, on February 18, 2015, was granted leave to issue alias summonses on unserved defendants. On March 11, 2015, an alias summons was issued as to Dr. Sovari at UIC, 839 West Roosevelt Road, Chicago, and returned on March 25, 2015. The sheriff's affidavit states that service was unsuccessful on March 18, 2015, because Dr. Sovari was "unknown" at that address.

¶ 9 On April 15, 2015, the circuit court granted plaintiff leave to issue alias summonses on the remaining unserved defendants and appointed a special process server. On June 1, 2015, plaintiff was granted leave to issue alias summonses "on [the] remaining unserved defendants."

¶ 10 On July 22, 2015, a second alias summons was issued for Dr. Sovari. On that date, plaintiff's counsel mailed the summons to the Beverly Hills sheriff's department (BHSD) and requested, in writing, service on Dr. Sovari at 127 South San Vicente Boulevard, AHSP3308, Los Angeles, California (the San Vicente address). The affidavit of service of a BHSD deputy sheriff states that service was unsuccessfully attempted at the San Vicente address (which was identified as Cedars-Sinai) on three dates: August 28, 2015; September 11, 2015; and September

25, 2015. The affidavit's notation for attempted service on August 28, 2015, states: "per front desk receptionist, this doctor must be served at [the Cedars-Sinai] office in Torrance. Not enough info given. No access given to serve the doctor." The notation for attempted service on September 11, 2015, states: "No access given to serve doctor, by front desk. Will contact Cedar[s] Sinai legal dept to see if they can accept documents for doctor." The notation for attempted service on September 25 states that the legal department "will only accept [service] on behalf of doctor if case is against their hospital."

¶ 11 On August 20, 2015, the court allowed alias summonses to issue. At that time, however, the second alias summons for Dr. Sovari had not been returned. The second alias summons was returned on October 2, 2015. On October 5, 2015, the court again entered an order allowing alias summonses to be issued on unserved defendants.

¶ 12 Two days later, on October 7, 2015, plaintiff issued a third alias summons seeking service on Dr. Sovari at the San Vicente address. An affidavit of a BHSD deputy sheriff states that service was unsuccessfully attempted at the San Vicente address on three dates: November 18, 2015; November 24, 2015; and December 4, 2015. The affidavit further states that "[d]efendant works at address. But cannot be served because of company policy." The notation on the affidavit relating to the attempted service on November 18, 2015, states: "Unable to locate doctor at hospital, front desk." The notation for attempted service on November 24, 2015, states: "No access [given] to see doctor. Per legal [department] doctor must be served at home address." The notation for attempted service on December 4, 2015, states: "Per security, no access to see doctor. Suggesting service at home address. Since staff will not allow access, unable to

substitute serve defendant." BHSD mailed that affidavit to plaintiff on December 8, 2015.[1]

¶ 13 On February 3, 2016, plaintiff issued a fourth alias summons seeking service on Dr. Sovari at 5759 West Sixth Street in Los Angeles (the Sixth Street address), which was mailed to BHSD on that date. The affidavit of service of a BHSD deputy sheriff states that personal service was unsuccessfully attempted at that address on four dates: February 11, 2016; February 17, 2016; February 28, 2016; and March 2, 2016. The notation for attempted service at 9:29 a.m. on February 11, 2016, states: "No answer at door. There was a package at door. The name on it did not match defendant's name." The notations for attempted services at 7:23 a.m. on February 17, 2016, and at 6:13 p.m. on February 28, 2016, state that there was "no answer" at the door on each date. The notation for the fourth attempt at service at 7:03 a.m. on March 2, 2016, states: "Unable to serve Dr. Ali Sovari. No answer at door. At least 3 attempts have been made. Due diligence." That affidavit was returned on March 30, 2016.

¶ 14 On April 25, 2016, plaintiff received leave to issue an alias summons. On June 15, 2016, plaintiff issued a fifth alias summons for Dr. Sovari at the Sixth Street address. The parties agree that Dr. Sovari was ultimately served on July 27, 2016, by a special process server at the 6th Street address.[2]

¶ 15 On September 30, 2016, Dr. Sovari filed a motion to dismiss count IV of plaintiff's complaint as against him, with prejudice, pursuant to Rule 103(b). Dr Sovari asserted that plaintiff did not exercise diligence in effectuating service and, as a result, there was an

[1] Prior to the return of this affidavit, the court, on November 13, 2015, allowed plaintiff to issue alias summonses.

[2] An affidavit of service upon Dr. Sovari is not in the record.

unreasonable delay in serving him with notice of the lawsuit. Dr. Sovari argued that: (1) in many instances, several months elapsed between the grant of leave to issue an alias summons and its actual issuance; (2) at several points, months had elapsed between failed service attempts and attempts at service at other locations; and (3) he was ultimately served almost two years after the filing of the complaint and almost four years after he treated the decedent.

¶ 16 Attached to the motion to dismiss was the affidavit of Dr. Sovari in which he averred that: (1) he is licensed as a physician in California; (2) he began a fellowship at Cedars-Sinai in Los Angeles on July 1, 2014, and completed it on June 30, 2016; (3) he moved from Chicago to California in June 2014, and his work address during his fellowship was "127 S. San Vincente [Boulevard], Los Angeles, California;" (4) he moved to the Sixth Street address, during the last week of June 2014 and has had no other home address since then; (5) he maintained a "public physician profile on the U.S. News & World Report Health website" and on a website called Doximity.com and had "maintained current address information on those websites" since July 1, 2014, when he moved to California; (6) he was not aware of this cause of action until he was served with the summons and complaint on July 27, 2016; and (7) he had not evaded service of summons in this case.

¶ 17 Plaintiff filed a response to the motion to dismiss, arguing that, under the factors for determining the reasonableness of service set out in *Segal*, she "used due diligence in obtaining service on an evasive defendant." More specifically, plaintiff argued that her service attempts were extensive and costly and were slowed by the doctor's failure to "provide his former place of employment with a current address and new place of employment." She asserted that

defendant's home and office addresses were not easily ascertained. Plaintiff further contended that Dr. Sovari would not "answer the door" when service was attempted at the Sixth Street address. Plaintiff also argued that Dr. Sovari likely had actual knowledge of the pending suit as a result of the unsuccessful attempts at service, asserting that he "presumably [] would have been informed by UIC of the pending litigation," and because he was represented by the same attorneys who represented another defendant, Dr. Stephanie Joe, who was served in June 2015.

¶ 18 Plaintiff attached to her response the affidavit of her lawyer, Mark G. Basile, which states as follows:

> "1. I am the [plaintiff's] attorney in the above case.
>
> 2. I made several attempts at serving defendant Ali Sovari, M.D. including placing service immediately after filing of this lawsuit with the Cook County Sheriff and five (5) additional times, including three times in Los Angeles, California.
>
> 3. After attempting service at this defendant's UIC office, I contacted the Department of Cardiology at the telephone number(s) listed in many internet websites listed for this defendant and was informed that this defendant either did not leave his present contact information or had forgot to leave this information.
>
> 4. Research was then conducted on other possible locations for this defendant including checking various websites which listed his addresses as 127 S. San Vicente, Los Angeles, California, 2247 Wankei Way, 4C, Oxnard, CA [the Oxnard address] and 5759 W. 6th St., Los Angeles, California.

5. I also faxed a copy of the summons and complaint to the fax numbers listed for [Cedars-Sinai], where defendant was listed as working, and to the fax number at [the Oxnard address].

6. I diligently attempted service at each one of these addresses as they became known and finally was able to have this defendant served on July 27, 2016 at his Los Angeles, [California] address.

7. That I have been diligent in prosecuting every aspect of this case including attempting and serving multiple defendants, responding to motion practice, and issuing discovery per the Court's orders.

8. That I have not acted intentionally to delay the case or circumvent the limitations period."

¶ 19 Plaintiff also attached to her response copies of the initial summons to Dr. Sovari at Presidential Towers; the July 22, 2015, and October 7, 2015, alias summonses to the San Vicente address; July 22, 2015, and February 3, 2016, letters from Mr. Basile to BHSD requesting service; and the affidavits of BHSD chronicling the service attempts at the San Vicente address between August 28, 2015, and December 4, 2015, and between February 11, 2016, and March 2, 2016; the February 3, 2016 and June 15, 2016 alias summonses to the Sixth Street address; and the affidavit of BHSD showing attempts at service at the Sixth Street address from February 11, 2016, to March 2, 2016. Plaintiff also submitted evidence to support Mr. Basile's assertion that he had faxed a copy of the summons and complaint to Dr. Sovari at numbers associated with Cedars-Sinai and his office at the Oxnard address on January 18, 2016, and confirmation that the

faxes had been received on January 21, 2016.

¶ 20 In response to Dr. Sovari's contention that his office information had been available on the U.S. News & World Report Health and Doximity.com websites, plaintiff argued that those sites were two of "perhaps hundreds of websites which pop up upon any internet search." Plaintiff also argued that defendant had not shown what information had been listed on those sites in 2014 and 2015. Additionally, plaintiff attached to her response photocopies of recent screen shots of Dr. Sovari's biography pages on the U.S. News & World Report Health website which state that his office is located at the Oxnard address, and that he is "affiliated with multiple hospitals in the area, including Advocate Christ Medical Center [Illinois] and Cedars-Sinai Medical Center." She also submitted a photocopy of a recent screen shot of Dr. Sovari's biography on the Doximity.com website which shows the location of the doctor's office as the Oxnard address; his affiliations with several hospitals in both Illinois and California; and licenses in Illinois and California. Plaintiff submitted a photocopy of a screen shot of Dr. Sovari's Facebook page which shows the location of his residence as Presidential Towers.

¶ 21 On January 26, 2017, the circuit court, in a written order, granted Dr. Sovari's motion to dismiss plaintiff's claims against him, with prejudice, pursuant to Rule 103(b). The court stated:

> "After reviewing the briefs and attachments and considering the factors enumerated in *Segal*, the [c]ourt finds the [p]laintiff did not exercise diligence in obtaining service on [d]efendant. Here it took 21 months to obtain service of process. Although [p]laintiff attempted service six times within that 21 month period in different states, there were times when [p]laintiff waited 3 or 4 months to issue summons and

> several attempts were made at the same address where [d]efendant could not be served. Further, during this entire time period, [d]efendant had the same residential address and information regarding his fellowship in California was available online. Moreover, [d]efendant signed a sworn statement in which he provides that he was not aware of this cause of action until receiving the summons and complaint on July [27], 2016."

¶ 22 Plaintiff filed a motion to reconsider arguing in part that, in considering the *Segal* factors, the court had erred by placing too much weight on the overall length of time to effectuate service, and by finding that plaintiff had attempted service only six times when, in fact, she had placed six summonses for service on Dr. Sovari in two states which resulted in "over 16 attempts at service."

¶ 23 The circuit court, on June 29, 2017, denied plaintiff's motion to reconsider and found, pursuant to Ill. S. Ct. R. 103(b) (eff. July 1, 2007), that there was "no just reason to delay either the enforcement of or appeal from" the orders granting Dr. Sovari's motion to dismiss and denying plaintiff's motion to reconsider. Plaintiff has timely appealed.

¶ 24 On appeal, plaintiff argues that she diligently attempted to effectuate service on Dr. Sovari and that her repeated efforts demonstrated her reasonable diligence in serving Dr. Sovari.

¶ 25 Rule 103(b) allows a court to dismiss an action where there has been a "fail[ure] to exercise reasonable diligence to obtain service on a defendant." *Id.* Where the failure to exercise reasonable diligence to obtain service occurs after the expiration of the statute of limitations, the dismissal shall be with prejudice. *Id.*; *Kole v. Brubaker*, 325 Ill. App. 3d 944, 949 (2001). The primary purpose of Rule 103(b) is to prevent the unnecessary and intentional

delay of service of summons upon a defendant for an indefinite period of time to circumvent the statute of limitations. *Emrikson v. Morfin*, 2012 IL App (1st) 111687, ¶ 16; *Kole*, 325 Ill. App. 3d at 949 (noting the statute of limitations is designed to allow the defendant a "fair opportunity of investigation").

¶ 26 Rule 103(b) does not set forth a specific time period for serving a defendant. Rather, the rule specifies that "[i]n considering the exercise of reasonable diligence, the court shall review the totality of the circumstances." Ill. S. Ct. R. 103(b). Additionally, "a court is required to consider 'the passage of time in relation to all the other facts and circumstances of each case individually.' " *Silverberg v. Haji*, 2015 IL App (1st) 141321, ¶ 32 (quoting *Case v. Galesburg Cottage Hospital*, 227 Ill. 2d 207, 213 (2007). The rule allows the trial court wide discretion in determining whether an action should be dismissed. *Cannon v. Dini*, 226 Ill. App. 3d 82, 86 (1992). We will disturb the dismissal of a complaint under Rule 103(b) only upon a finding of an abuse of the trial court's discretion. *Case*, 227 Ill. 2d at 213; *Primus Financial Services v. Walters*, 2015 IL App (1st) 151054, ¶ 17 (citing *Segal*, 136 Ill. 2d at 286). An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the trial court. *Seymour v. Collins*, 2015 IL 118432, ¶ 41.

¶ 27 In seeking the dismissal of a complaint under Rule 103(b), the defendant must initially make a *prima facie* showing of a lack of reasonable diligence in effectuating service. *Emrikson*, 2012 IL App (1st) 111687, ¶ 17. Upon this showing, the burden of proof shifts to the plaintiff "to demonstrate, by way of affidavit or other competent evidentiary materials, that reasonable

diligence was exercised and that any delays in effecting service were justified." *Mular v. Ingram*, 2015 IL App (1st) 142439, ¶ 21 (citing *Kole*, 325 Ill. App. 3d at 949-50).

¶ 28 As to the *prima facie* showing of a lack of reasonable diligence, this court has found that even a period of five months between the filing of a complaint and subsequent service is sufficient for a *prima facie* showing of the lack of diligence in service. *Id*. (citing *Verploegh v. Gagliano*, 396 Ill. App. 3d 1041, 1045 (2009)); see also, *e.g*., *Long v. Elborno*, 376 Ill. App. 3d 970, 980 (2007) (seven-month delay in service demonstrated a lack of reasonable diligence). Here, approximately 21 months elapsed between the filing of plaintiff's complaint in October 2014 and the time Dr. Sovari was ultimately served in July 2016. We find that period was sufficient to shift to plaintiff the burden to establish that she acted with reasonable diligence in serving Dr. Sovari, or offer any explanation that might satisfactorily justify any delay in service. See *Kole*, 325 Ill. App. 3d at 949-50.

¶ 29 A determination of whether there should be a dismissal under Rule 103(b) is based on an objective test of reasonableness and not on the plaintiff's subjective intent. *Emrikson*, 2012 IL App (1st) 111687, ¶ 20. In determining whether a plaintiff has demonstrated reasonable diligence in effecting service, a court considers the following factors: (1) the length of time to obtain service of process; (2) the activities of the plaintiff; (3) the plaintiff's knowledge of the defendant's location; (4) the ease with which defendant's whereabouts could have been ascertained; (5) actual knowledge on the part of the defendant of the pendency of the action as a result of ineffective service; (6) special circumstances which would affect the plaintiff's efforts; and (7) actual service on the defendant. *Mular*, 2015 IL App (1st) 142439, ¶ 23 (citing *Segal*,

136 Ill. 2d at 287). Courts have also considered the timing of the filing of the complaint relative to the limitations period, noting that if the complaint is filed near the end of that period, a lengthy delay in service essentially negates any protection against stale claims that is afforded by the statute of limitations. *Polites v. U.S. Bank National Ass'n*, 361 Ill. App. 3d 76, 86 (2005); *Lee v. Decker*, 17 Ill. App. 3d 93, 96 (1974). Moreover, the defendant need not demonstrate prejudice resulting from a delay in service. *Mular*, 2015 IL App (1st) 142439, ¶ 21 (quoting *Kole*, 325 Ill. App. 3d at 952).

¶ 30 As to the first factor, the length of time used to obtain service of process, plaintiff required approximately 21 months after filing the complaint to obtain service on Dr. Sovari in July 2016, approximately 20 months after the expiration of the statute of limitations in November 2014 and nearly three years and nine months after the events that gave rise to the lawsuit. A dismissal pursuant to Rule 103(b) has been upheld where the time between the expiration of the statute of limitations and service on the defendant was approximately 20 months. *Faust v. Michael Reese Hospital and Medical Center*, 61 Ill. App. 3d 233, 236-37 (1978) (citing *Pisciotto v. National Heater Co.*, 21 Ill. App. 3d 73 (1974), and *Roberts v. Underwood*, 132 Ill. App. 2d 439 (1971)). This factor weighs in favor of dismissal.

¶ 31 The second factor to be considered is plaintiff's activities in effectuating service. Plaintiff asserts that she expended considerable time and money initiating at least 16 service attempts through the issuance of six summonses in two states.

¶ 32 Plaintiff immediately attempted to serve Dr. Sovari at his last known home address in Chicago and, when informed that the doctor no longer lived there, she issued five alias

summonses in two states—including at Dr. Sovari's last known place of employment in Illinois, and his work place and residence in California. These activities—an immediate attempt to obtain service—(see *Kole,* 325 Ill. App. 3d at 950), and the issuance of alias summonses on Dr. Sovari (see *Emrikson*, 2012 IL App (1st) 111687, ¶ 25)—are indicative of diligence. However, the question of due diligence turns on "the totality of the circumstances." Ill. S. Ct. R. 103(b) (eff. July 1, 2007).

¶ 33 The first alias summons was issued in March 2015 for service on Dr. Sovari at UIC where the decedent was treated by Dr. Sovari. Although this action took place less than one full month after the court gave plaintiff leave to issue an alias summons, it was four months after plaintiff had been notified that service at Presidential Towers was unsuccessful. The attempt at service at UIC on March 18, 2015, was unsuccessful. When the first alias summons was returned on March 25, 2015, plaintiff was notified only that Dr. Sovari was "unknown" at UIC. According to Mr. Basilie's affidavit, he then contacted UIC and requested updated information as to where Dr. Sovari was located and was told that the doctor had not provided updated information. Thereafter, plaintiff's counsel conducted "research" as to Dr. Sovari's location, "including checking various websites," and found three addresses in California: Cedars-Sinai; the Oxnard address; and the Sixth Street address. The affidavit does not specify the dates for these actions, nor detail the nature, extent, nor duration of the research. The affidavit does not state when plaintiff's counsel discovered the three addresses in California.

¶ 34 Plaintiff attempted service at Cedars-Sinai, at the San Vicente address by a second alias summons issued on July 22, 2015, four months after the return of the first alias summons to UIC,

and over one month after plaintiff was given leave to issue an alias summons on June 1, 2015. The second alias summons was returned on October 2, 2015. Plaintiff received leave to issue an alias summons on October 5, 2015, and two days later on October 7, 2015, issued a third alias summons to Cedars-Sinai. After BHSD mailed the third alias summons back to plaintiff on December 8, 2015—almost two months later—plaintiff issued a fourth alias summons at the Sixth Street address on February 3, 2016. After the fourth alias summons was returned on March 30, 2016, on April 25, 2016, plaintiff was given leave to issue an alias summons. She waited until June 15, 2016 to issue a fifth alias summons to the Sixth Street address, which was almost three months after the return of the fourth alias summons, and almost two months after plaintiff was granted leave to issue an alias summons.

¶ 35 Periods of a month or two between attempts at service have been considered reasonable by this court. See *Verploegh*, 396 Ill. App. 3d at 1046. However, as the circuit court found relevant here, at several points, periods of three or four months of inactivity elapsed between service attempts by plaintiff. And, in reviewing the gaps in time between the issuance of summonses, we must consider that each summons, on its face, indicates that it "may not be served more than 30 days after its date." Thus, as we found in *Mular*, a plaintiff's counsel should verify the status of service based on this limitation, whether or not he received the affidavit of nonservice. *Mular*, 2015 IL App (1st) 142439, ¶ 26 (citing *Penrod v. Sears, Roebuck & Co.*, 150 Ill. App. 3d 125, 129 (1986)). Plaintiff has not presented sufficient evidence to explain these gaps in activity.

¶ 36 In addition, as noted by the circuit court, plaintiff issued the third alias summons to Dr.

Sovari at Cedars-Sinai after the return of service on the second alias summons indicated service could not be completed on the doctor at Cedars-Sinai. Plaintiff believes that the policy of Cedars-Sinai to not allow a physician to be served there, or to accept service on a physician's behalf unless the hospital is a party to the lawsuit, is unreasonable. However, her disagreement with the policy does not justify the delay caused by a second attempt at service at Cedars-Sinai in light of the information in the affidavit of nonservice of the second alias summons. Further, service left with an employee or agent of the hospital does not constitute proper service of process as to an individual physician. See, *e.g.*, *Dupon v. Kaplan*, 163 Ill. App. 3d 451, 456 (1987) (describing attempts to personally serve physician in his office at a hospital).

¶ 37 The record supports a finding of a lack of due diligence on plaintiff's part. Therefore, the second factor weighs against plaintiff.

¶ 38 The third and fourth factors are plaintiff's knowledge of Dr. Sovari's location and the ease with which his whereabouts could have been ascertained. Dr. Sovari had relocated to California at the end of June 2014. According to the unrebutted affidavit of Dr. Sovari in support of his motion to dismiss, his work address from July 2014 to June 2016 was the San Vicente address and, his home address since the end of June 2014, was the Sixth Street address. Dr. Sovari also averred that this information was readily available on the U.S. News & World Report Health and Doximity.com websites. The circuit court relied upon this evidence in concluding that the doctor's address was easily ascertained. See *Faust*, 61 Ill. App. 3d at 237 (where this court has noted that a plaintiff who is "diligently searching for a physician would be expected to" contact medical organizations in the community to determine his whereabouts).

¶ 39 Plaintiff argues that Dr. Sovari moved to California "without leaving new information" and "apparently assumes everyone knew he moved" to California "as if it were general knowledge." Plaintiff also asserts the doctor's home address was difficult to obtain because physicians are reluctant to provide their home addresses.

¶ 40 Contrary to plaintiff's positions, the consideration here is whether, objectively, that information could have been ascertained by the plaintiff with reasonable effort. See *Emrikson*, 2012 IL App (1st) 111687, ¶ 20 (a Rule 103(b) dismissal is based on an objective standard of reasonableness). Moreover, plaintiff's counsel averred in his affidavit that, sometime after learning that Dr. Sovari was unknown at UIC in March 2015, and before issuing the second alias summons, his own research, which included a review of the Internet, revealed the San Vicente, Oxnard, and Sixth Street addresses.

¶ 41 The third and fourth factors favor a finding that there was a lack of due diligence.

¶ 42 The fifth factor is Dr. Sovari's actual knowledge of the pendency of the action. As the circuit court noted, Dr. Sovari attested that he was unaware of this lawsuit until he was served with the summons and complaint in July 2016.

¶ 43 Plaintiff, however, argues that it is implausible that Dr. Sovari was not informed of the action by UIC, by his defense counsel or insurance carrier (which insured another defendant), those persons at UIC and Cedars-Sinai who were aware of the attempts at service, and the office staff at the Oxnard address where the complaint was faxed. However, those suggested scenarios represent speculation by plaintiff and are unsupported by any facts in the record that Dr. Sovari actually learned of the lawsuit through these possible sources.

¶ 44 Plaintiff has not established that Dr. Sovari had actual knowledge of the lawsuit prior to being served. Moreover, even if we assume purely *arguendo* that Dr. Sovari had knowledge of the lawsuit, such actual knowledge alone does not prevent a dismissal under Rule 103(b) when, considering all of the relevant factors, the trial court finds the plaintiff did not use reasonable diligence in effecting service. See *Marks*, 260 Ill. App. 3d at 1047-48; *Faust*, 61 Ill. App. 3d at 238. The fifth factor must be weighed against plaintiff.

¶ 45 The sixth factor to be considered is the existence of any special circumstances affecting plaintiff's attempts at service. Examples of special circumstances are: a stay in the litigation in the time service was attempted (*Kincaid v. Ames Department Stores, Inc.*, 283 Ill. App. 3d 555, 563-64 (1996)); the departure from the law firm of the main attorney involved in the plaintiff's case (*Brezinski v. Vohra*, 258 Ill. App. 3d 702, 705-06 (1994)); and an error in service by the sheriff's office that was outside the plaintiff's control (*Clemons v. Atlas*, 185 Ill. App. 3d 894, 897 (1989)). The weight to be given to a special circumstance relative to the other *Segal* factors depends on the particular facts of each case. *Marks*, 260 Ill. App. 3d at 1049.

¶ 46 On appeal, plaintiff cites several circumstances which, she claims, affected service in this case: Dr. Sovari's failure to leave a new address with UIC; Cedars-Sinai's policies which hampered service on Dr. Sovari; and the doctor was not served until the fifth attempt at the Sixth Street address. These circumstances have been considered in our examination of the previous factors, and do not constitute special circumstances.

¶ 47 Plaintiff also argues as a special circumstance, the fact that personal service was eventually effectuated on Dr. Sovari by a special process server because he "would not answer

his door." However, a party seeking to have a summons served can do so through the sheriff's office or seek the appointment of a special process server. 735 ILCS 5/2-202(a-5) (West 2012); see generally *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 131146, ¶ 15. Dr. Sovari averred that he did not avoid service. The affidavit on nonservice of the fourth alias summons at the Sixth Street address states that there was "no answer at the door," but did not indicate there was evidence that someone was at home at the times service was attempted. The use of a special process server in this case does not constitute a special circumstance. The sixth factor favors dismissal.

¶ 48 The seventh factor in the overall analysis is the actual service of Dr. Sovari. Dr. Sovari was served with the summons and complaint at the Sixth Street address which had been his home address since June 2014. Plaintiff argues that the facts here are analogous to those in *Verploegh*, in which reasonable diligence was found in serving the defendant. In *Verploegh*, the plaintiff began to attempt service promptly after the filing of the complaint and effectuated service within seven months and, even though gaps of two weeks to two months occurred between the plaintiff's actions, there were no prolonged stretches of inactivity. *Verploegh*, 396 Ill. App. 3d at 1046. Here, even though plaintiff first attempted service shortly after the complaint was filed, the length of time taken to effectuate process was three times longer than that in *Verploegh*, and no activity occurred for periods of several months between service attempts.

¶ 49 The delay in service here is "particularly problematic" as the complaint was filed approximately one month prior to the expiration of the statute of limitations. *Mular*, 2015 IL App (1st) 142439, ¶ 27. "Under such circumstances, a lengthy delay in service nullifies the

protection against stale claims the statute of limitations is designed to afford." *Id*. (citing *Polites*, 361 Ill. App. 3d at 86). The seventh factor favors dismissal.

¶ 50 In conclusion, based on our review of the relevant factors and the record in this case, we cannot say that no reasonable person would have adopted the circuit court's view that there was a failure to exercise reasonable diligence in serving Dr. Sovari. "Far shorter delays have led to dismissals with prejudice for failure to exercise the reasonable diligence required under Rule 103(b)." *Id*. ¶ 30 (citing *Long v. Elborno*, 376 Ill. App. 3d 970, 980 (2007) (where there was a seven month delay), and *Tischer v. Jordan*, 269 Ill. App. 3d 301, 308 (1995) (where there was a four and one-half month delay)). Thus, the circuit court did not abuse its discretion in dismissing plaintiff's complaint pursuant to Rule 103(b).

¶ 51 Accordingly, the judgment of the circuit court is affirmed.

¶ 52 Affirmed.