

## **SUMMARY STATEMENT**

*Kandi Terry-Smith and Roy A. Smith Jr. v. Mountain View Hospital, LLC, and Idaho Falls Community Hospital, LLC*

Docket No. 51259

In this case arising out of Bonneville County, the Court of Appeals affirmed the district court's judgment summarily dismissing the case. This case arose after Kandi Terry-Smith and Roy A. Smith, Jr. claimed Kandi suffered an injury while she was a patient at Mountain View Hospital (MVH). The Smiths filed a complaint in the district court against MVH and Idaho Falls Community Hospital (IFCH). Through calendaring errors, a second complaint was filed in the district court and the first case was dismissed for inactivity. The Smiths filed a motion for relief from dismissal, which the district court granted. The second case was dismissed as time-barred by the statute of limitations. The district court dismissed IFCH and granted a sixty-day extension to complete service upon MVH in the first case. The process server hired by the Smiths delivered a copy of the summons to a receptionist at the law firm hired by MVH. MVH filed a notice of special appearance and a motion to dismiss based on lack of service pursuant to Idaho Rule of Civil Procedure 12(b)(4) and 12(b)(5). The sixty-day extension for service of process passed. The district court granted MVH's motion to dismiss. The Smiths filed a motion for partial reconsideration, a motion for leave to amend the complaint, and a motion for additional extension of time. The district court denied those motions. Finally, the Smiths filed an I.R.C.P. 60(b) motion for relief from the order denying reconsideration and judgment. The district court denied the motion. The Smiths appealed.

On appeal, the Smiths argued the district court erred in dismissing the case and denying their motion for partial reconsideration. The Court of Appeals held that the attorney for the Smiths failed to exercise due diligence by relying on a facially deficient affidavit for process service and ignoring a motion to dismiss, citing insufficient service and an email from opposing counsel confirming the filing of the motion to dismiss. The Smiths also argued that service was sufficient because the registered agent had virtually instantaneous notice of the complaint because the process server gave the complaint to a receptionist at the registered agent's law office. The Court applied the holding in *Elliott v. Verska*, 152 Idaho 280, 286, 271 P.3d 678, 684 (2012), which held the registered agent later acquiring a copy of the summons does not constitute sufficient service.

The Smiths also argued on appeal that an email containing the complaint for the second case constituted service in this case since the documents were identical. The Court reiterated that, even if the email pertained to the instant case, it would not satisfy the requirement for service of a corporation. The Smiths also appealed the order denying the motion for relief from the order denying the motion for partial reconsideration. The Court did not consider the substantive issue for failure to state and/or present arguments relating to the standard of review.

MVH requested attorney fees, both in the district court and on appeal. The Court denied the request for attorney fees in the district court as MVH failed to file a cross-appeal pursuant to Idaho Appellate Rule 15. Because the Smiths' opening brief on appeal failed to include controlling law and asked this Court to second guess the district court rather than review for error, the Court awarded MVH attorney fees on appeal pursuant to Idaho Code § 12-121.

*This summary constitutes no part of the opinion of the Court, but has been prepared  
by court staff for the convenience of the public.*