

SUPREME COURT OF ARKANSAS

No. 11-1192

COURTNEY BAYLARK

APPELLEE

V.

HELENA REGIONAL MEDICAL
CENTER, PHILLIPS HOSPITAL
CORPORATION D/B/A HELENA
REGIONAL MEDICAL CENTER and
EXIGENCE, LLC

APPELLEES

Opinion Delivered November 1, 2012APPEAL FROM THE PHILLIPS
COUNTY CIRCUIT COURT,
[NO. CV2008-273]

HONORABLE L.T. SIMES, II, JUDGE

REVERSED AND DISMISSED ON
CROSS-APPEAL.**JIM HANNAH, Chief Justice**

Appellant Courtney Baylark appeals the circuit court's dismissal of his complaint against appellee Exigence, LLC, based on Baylark's failure to comply with Arkansas Code Annotated section 16-114-203(a) (Repl. 2006), the two-year statute of limitations of the Arkansas Medical Malpractice Act (AMMA). He also appeals the circuit court's denial of his motion for reconsideration of the motion to dismiss. On appeal, Baylark contends that the two-year statute of limitations is inapplicable because his cause of action against Exigence is not for a "medical injury" as defined in the AMMA and because Exigence is not a "medical care provider" as defined in the AMMA. On cross-appeal, Exigence contends that the circuit court (1) erred in granting Baylark additional time in which to serve process on Exigence as no good cause for an extension of time existed, (2) erred in denying Exigence's motion to dismiss for insufficiency of process and insufficiency of service of process, (3) erred in denying

Exigence's motion for partial summary judgment as to Baylark's cause of action for *res ipsa loquitur*, (4) erred in denying Exigence's motion for partial summary judgment as to Baylark's cause of action for breach of contract, and (5) erred in granting Baylark's motion in limine precluding evidence of previous settlement amounts while simultaneously denying Exigence's motion to receive a credit for settlement amounts. We reverse and dismiss on cross-appeal.

On August 20, 2005, Baylark was injured at his workplace when he was struck by a vehicle. The vehicle pinned him against a wall and crushed his left leg. Baylark was transported to Helena Regional Medical Center, where he was examined and treated by Dr. Vijahabhasker Reddy. On August 14, 2008, Baylark filed a complaint in the Phillips County Circuit Court, naming Helena Regional Medical Center (HRMC), Phillips Hospital Corporation d/b/a Helena Regional Medical Center, and Exigence, LLC, as defendants, and alleging causes of action for negligence, breach of contract, and vicarious liability. Exigence had entered into an exclusive "Emergency Services Agreement" with Phillips Hospital Corporation, under which Exigence provided physicians to serve the hospital and had specifically contracted with Dr. Reddy to provide emergency medical services for HRMC. Baylark alleged in his complaint that he was given inadequate care and inadequate discharge instructions and that no tests were performed to discover a transected left-popliteal artery, which eventually resulted in his left leg being amputated.

We limit our discussion to the first two points on cross-appeal¹ because they are dispositive of the entire appeal. In its first point on cross-appeal, Exigence contends that the circuit court erred in granting Baylark additional time in which to serve process on Exigence because no good cause for an extension of time existed. In its second point on cross-appeal, Exigence contends that, because Baylark obtained an extension from the circuit court without alleging or showing good cause, service was defective, and the circuit court therefore erred in denying its motion to dismiss for insufficiency of process and insufficiency of service of process.

Baylark filed his complaint on August 14, 2008, and his first amended complaint on August 28, 2008. The first summons in this case was issued by the clerk of the circuit court on August 14, 2008, and it contained the wrong case number. Thereafter, a summons was issued on November 18, 2008, and Baylark began efforts at service. Exigence claims that Baylark failed to effectively serve Exigence on November 18, 2008, when Baylark served in-

¹Baylark contends that all but one of Exigence's points on cross-appeal should be dismissed because those points on appeal could have been made during a prior appeal to this court and because *res judicata* and the law-of-the-case doctrine preclude those issues from being heard in the instant appeal. Baylark is mistaken. Exigence's initial appeal in this case was an *interlocutory appeal* of a strike order taken pursuant to Arkansas Rule of Appellate Procedure—Civil 2(a)(4). See *Exigence, LLC v. Baylark*, 2010 Ark. 306, 367 S.W.3d 550. Rule 2(a)(4) did not authorize Exigence to bring an interlocutory appeal of the issues it now raises in its cross-appeal. See *Lake Village Healthcare Ctr., LLC v. Hatchett*, 2012 Ark. 223, at 16 n.2, ___ S.W.3d ___, ___ n.2 (“[A]n appeal from an order striking an answer is accepted only to address those matters that are related to the striking of the answer; therefore, this court will not address issues that do not procedurally come within the purview of this type of interlocutory appeal.”) (Danielson, J., concurring). A final order has been entered in this case, and Exigence's points on cross-appeal are properly before this court. See Ark. R. App. P.—Civ. 2(b) (“An appeal from any final order also brings up for review any intermediate order involving the merits and necessarily affecting the judgment.”).

house counsel for Exigence, who was not authorized to receive service of process in this case, a summons with the wrong case number; on November 29, 2008, and on December 4, 2008, when Baylark served Diane Adams, a receptionist not authorized to accept service of process; on November 24, 2008, when Baylark served Exigence's agent for service of process in Delaware; and on December 10, 2008, when Baylark served CT Corporation System, which was not an agent for service of process for Exigence.

On December 9, 2008, Baylark filed a motion for extension of time to serve Exigence and stated that he believed he had good service on Exigence, but that Exigence "may make an objection to the service of process in this case." Baylark further stated that even though service was effective, Exigence had not filed an answer, and he requested an extension of time for service until April 1, 2009, "depending upon [Exigence's] raising issues in this case." Baylark attached returns of service and affidavits of service to the motion, and claimed that those exhibits showed that he had "accomplished" service of process. The circuit court granted Baylark's motion for extension of time to serve Exigence until April 1, 2009, "for good cause shown, based on the pleadings, the attachments to the motion, and all other matters properly before the court." The parties agree that Baylark served Exigence's correct agent for service of process in Arkansas on January 22, 2009, while the extension order was still in effect.

On February 4, 2009, Exigence filed a motion to dismiss for insufficiency of process and insufficiency of service of process. Exigence alleged that Baylark had failed to effect service upon Exigence within 120 days of filing his complaint, as required by Arkansas Rule

of Civil Procedure 4(i). Exigence further alleged that Baylark should not have been granted an extension of time in which to effect service on Exigence because no good cause existed and because any service of process made subsequent to Baylark's 120-day time limit was deficient.

Baylark responded that he had obtained sufficient service within the 120-day period required by Rule 4(i). In addition, Baylark averred that he had established good cause for the extension of time to effect service, that service obtained while an order of extension is in effect is valid, and that he had properly served Exigence's registered agent in Arkansas within the extended time period. The circuit court denied Exigence's motion to dismiss.

Pursuant to Rule 4(i) of the Arkansas Rules of Civil Procedure, Baylark had 120 days, until December 12, 2008, to serve Exigence. Rule 4(i) further provides that a plaintiff may make a motion, within the 120-day period, to extend time for service. Two things are required to obtain an extension for the period of service: (1) the timely filing of a motion for extension, and (2) a showing of good cause. *Henyan v. Peek*, 359 Ark. 486, 493, 199 S.W.3d 51, 54 (2004).

Here, Baylark filed a timely motion for extension, but Exigence contends that Baylark failed to show good cause to warrant the granting of the motion. We agree. In this case, Baylark's sole reason for needing an extension of time was that Exigence might raise service issues later in the case. In *Nelson v. Weiss*, 366 Ark. 361, 364, 235 S.W.3d 891, 894 (2006), we stated that "the mere fact that a defendant may raise a defense he is entitled to raise does not amount to 'good cause' for an extension of time past 120 days to effect service."

Ultimately, this court found that good cause existed in *Nelson* because the plaintiff had sent the summons to the Washington County Sheriff, who had been unable to serve the complaint. Here, however, Baylark never claimed that he was unable to obtain service on Exigence. In fact, Baylark claimed that he had obtained service on Exigence.

Exigence was entitled to raise the defenses of insufficiency of process and insufficiency of service of process. Baylark's assertion that Exigence might raise arguments regarding service—defenses Exigence was entitled to raise—does not amount to good cause for an extension of time to effect service. *See Nelson, supra*. Moreover, Baylark affirmatively claimed in his motion that he believed he had obtained good service, an assertion that negated the need for an extension of time. We hold that the circuit court erred in granting Baylark's motion for extension of time to effect service.

In addition, we do not agree with Baylark's argument that, even if the circuit court erred in granting the order extending time for service, he had a right to rely on that order. In support of his argument, Baylark cites *King v. Carney*, 341 Ark. 955, 20 S.W.3d 341 (2000). *King*, however, is distinguishable. In that case, this court held that the plaintiff, who had postponed her attempts to serve defendants based upon the extension orders previously entered by the circuit court, had the right to rely upon the extension orders. *Id.* at 959, 20 S.W.3d at 343. As pointed out by Exigence, Baylark, by his own admission, did not rely upon the extension order to obtain service; rather, Baylark averred that service had already been completed before the extension was entered.

Baylark served Exigence on January 22, 2009, which was outside the 120-day time

limit in Rule 4(i).² While Baylark obtained an extension of time for service of process from the circuit court, he did so without demonstrating good cause and, as such, that service was defective. We hold that the circuit court erred in denying Exigence's motion to dismiss for insufficiency of process and insufficiency of service of process.

Reversed and dismissed on cross-appeal.

David A. Hodges; and Wilson Law Firm, P.A., by: E. Dion Wilson, for appellant.

Barber, McCaskill, Jones & Hale, P.A., by: John S. Cherry, Jr., and S. Brent Wakefield, for appellee Exigence, LLC.

²While Baylark maintained before the circuit court that he had obtained service within the 120-day period required by Rule 4(i), he does not advance that argument on appeal.