

STATE OF MICHIGAN
COURT OF APPEALS

HEINRICH SCHORSCH,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 187982

Oakland Circuit Court

ARMAND VELARDO and ARMAND
VELARDO, P.C.,

LC No. 94-486998-NM

Defendants-Appellees.

Before: Bandstra, P.J., and Griffin and Fitzgerald, JJ.

FITZGERALD, J. (dissenting.)

I respectfully disagree with the majority's conclusion that plaintiff's three to five attempts to serve defendants did not constitute a diligent effort to serve defendants. The attempts to serve defendants began eight days before the expiration of the original summons. In light of the fact that service was successful in the unrelated case, plaintiffs had no reason to believe that defendants would be unavailable or that service would not be successfully effected before the original summons expired. Under the totality of the circumstances, I would hold that plaintiff established good cause for not serving the original summons within the ninety-one day period and would reverse the trial court's dismissal of the case.

/s/ E. Thomas Fitzgerald