

¶ 2 Defendants, Bravo Care of Elgin, Inc., Rosewood Care Center of Elgin, Bravo Nursing Home Services, Inc., and Midwest Administrative Services, Inc., appeal the order of the circuit court denying defendants' motion to transfer venue as untimely. On appeal, defendants contend that the "mailbox" rule applies to the filing of their motion to transfer venue, and therefore the trial court erred in finding that their motion was untimely filed. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court entered an order denying defendants' motion to transfer venue on August 26, 2016. Defendants sought a permissive interlocutory appeal pursuant to Illinois Supreme Court Rule 306(a)(4) (eff. July 1, 2017), which this court granted on December 15, 2016. Accordingly, this court has jurisdiction pursuant to Rule 306(a)(4) governing appeals by petition.

¶ 5 BACKGROUND

¶ 6 Plaintiff, a resident of Kane County, filed her complaint in Cook County on June 28, 2016, and defendants' registered agent was served with the complaint on July 21, 2016. Defendants were thus required to appear and answer the complaint by August 22, 2016. On August 22, 2016, plaintiff filed a motion for default. On that date, defendants mailed a motion to transfer venue arguing that the nursing home where the actions at issue occurred is located in Kane County, and none of the defendants have offices or registered agents in Cook County. Instead, defendants' registered agent is located in Sangamon County. In the motion, defendants sought transfer of the cause to either Kane or Sangamon County, and further argued that plaintiff "makes no allegation that venue is proper in this Court." Defendants also mailed the answer to plaintiff's complaint, as well as their appearance and jury demand. A certificate of mailing attached to the motion states that "the original of the foregoing was sent via U.S. Mail, postage

prepaid, to Dorothy Brown, Clerk of the Circuit court of Cook County, Richard J. Daley Center, 50 W. Washington, Room 801, Chicago, IL 60602 and that a true and correct copy of same was mailed to the attorneys listed below this 22nd day of August, 2016.” Although the certificate of mailing states that the mailing was certified by “[t]he undersigned attorney,” the certificate contains no identification of that attorney other than an illegible signature. The motion to transfer venue was file stamped on August 29, 2016.

¶ 7 The parties appeared before the trial court on August 26, 2016, for a hearing. The trial court denied defendants’ motion to transfer venue as untimely reasoning that the mailbox rule did not apply, and granted defendants leave to file their answer, appearance, and jury demand *instanter*. On September 25, 2016, defendants filed their petition for leave to appeal to this court. On September 30, 2016, defendants filed an alternative motion for clarification and motion for reconsideration. On October 17, 2016, after a hearing, the trial court struck all of defendants’ motions and stayed the proceedings, placing the case on the appellate calendar. This court granted the appeal pursuant to Rule 306(a)(4).

¶ 8 ANALYSIS

¶ 9 We first address plaintiff’s challenge to this court’s jurisdiction over the appeal. Defendants filed an interlocutory appeal pursuant to Rule 306(a)(4), which permits an appeal from an order granting or denying a motion to transfer venue. Specifically, Rule 306(a)(4) provides:

“(a) **Orders Appealable by Petition.** A party may petition for leave to appeal to the Appellate Court from the following orders of the trial court:

* * *

(4) from an order of the circuit court granting or denying a motion for a transfer of venue based on the assertion that the defendant is not a resident of the county in which the action was commenced, and no other legitimate basis for venue in that county has been offered by the plaintiff;” Illinois Supreme Court Rule 306(a)(4) (eff. July 1, 2017).

Plaintiff contends Rule 306(a)(4) should be read to mean that this court has jurisdiction only when the trial court disposes of the motion based on whether or not the defendant was a resident of the county in which the action was commenced. Since the trial court here denied defendants’ motion as untimely, rather than based on the county of defendants’ residence, plaintiff argues Rule 306(a)(4) does not apply and this court is without jurisdiction to hear the appeal.

¶ 10 We disagree. This court has interpreted Rule 306(a)(4) to mean that, instead, it is the motion to transfer venue which must be “based on the assertion that the defendant is not a resident of the county in which the action was commenced.” See *State Farm Mutual Automobile Insurance Co. v. Hayek*, 349 Ill. App. 3d 890, 892-93 (2004) (“[i]n order for Rule 306(a)(4) to apply, the defendant’s motion to transfer venue must be ‘based on the assertion that the defendant is not a resident of the county in which the action was commenced, and no other legitimate basis for venue in that county has been offered by plaintiff’”). In *State Farm*, this court found that we had no jurisdiction to consider an appeal from the trial court’s denial of a motion that sought transfer based on the venue provision of the Arbitration Act rather than on defendant’s county of residence. *Id.* at 893. Plaintiff cites no cases in support of her interpretation of the rule, and we have found none. We find that this court has jurisdiction pursuant to Rule 306(a)(4) to consider an appeal from the denial of a motion to transfer venue to another county within this state, as long as the motion was based on the claim that defendant is not a resident of the county in which the action was commenced.

¶ 11 Plaintiff filed her complaint in Cook County. In their motion to transfer venue, defendants argued that the nursing home where the actions at issue occurred is located in Kane County, and none of the defendants have offices or registered agents in Cook County, where plaintiff's action was commenced. Instead, defendants' registered agent is located in Sangamon County. Defendants' motion sought transfer of the cause to either Kane or Sangamon County and the trial court denied defendants' motion. Accordingly, this court has jurisdiction to consider defendants' appeal under Rule 306(a)(4).

¶ 12 We now turn to the merits of defendants' appeal. Defendants contend the trial court erroneously refused to apply the mailbox rule in finding that their motion to transfer venue was untimely filed. Generally, the mailbox rule provides that if a filing is received by the clerk after the due date, the time of the mailing shall be deemed the time of filing. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 214 (2009). Plaintiff filed her complaint on June 28, 2016, and service was perfected on July 21, 2016. Defendants were ordered to file an answer within 30 days after service, not counting the day of service. The thirtieth day, August 20, 2016, fell on a Saturday so defendants' answer was due August 22, 2016. Defendants mailed their motion to transfer venue on August 22, 2016, and also mailed their answer to the complaint and appearance on that date. However, the motion to transfer venue was file-stamped by the clerk on August 29, 2016. Pursuant to section 2-104(b) of the Code of Civil Procedure (Code) (735 ILCS 5/2-104(b) (West 2016)), defendants waive objections of improper venue unless a motion to transfer is made "on or before the date upon which [defendants are] required to appear or within any further time" defendants are granted to answer the complaint. Therefore, whether defendants' motion to transfer venue was timely filed within the 30 days allowed for filing their answer, by August 22, 2016, depends on whether defendants can apply the mailbox rule.

¶ 13 Defendants argue that we should apply the rule here because the trend is to equate time of mailing with time of filing. See *Harrisburg-Raleigh Airport Authority v. Department of Revenue*, 126 Ill. 2d 326, 340 (1989) (our supreme court noted that “in light of modern policies and practices,” when documents are filed with the clerk of the circuit court should “take into account the widespread practice of filing documents by mail”). While this may be true, defendants’ must first demonstrate proper proof of mailing because if sufficient proof of mailing is not on file, “there is nothing in the record to establish the date the document was timely mailed” for application of the mailbox rule. *Secura*, 232 Ill. 2d at 216.

¶ 14 Illinois Supreme Court Rule 11(b)(3) (eff. Jan. 1, 2016), allows parties to serve a document by United States mail. Rule 12(b)(3) (eff. Nov. 1, 2016) provides that when service is by mail, service is proved “by certificate of the person, as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 West 2012)), who deposited the document in the mail ***, stating the time and place of mailing or delivery, the complete address which appeared on the envelope or package, and the fact that proper postage or delivery charge was prepaid.” “Although minor defects will be excused, proof of proper service by mail must be made in substantial compliance with the requirements of Supreme Court Rule 12.” *Ingrassia v. Ingrassia*, 156 Ill. App. 3d 483, 502 (1987).

¶ 15 Defendants’ motion to transfer venue was accompanied by a certificate of mailing. However, the certificate does not identify the person who deposited the document in the mail. Rule 12(b)(3) explicitly provides that service by mail is proved “by certificate of the person *** who deposited the document in the mail.” There can be no substantial compliance with the rule if there is no identifiable person on record issuing the certificate. Furthermore, the certificate does not state the time and place of mailing. These omissions taken together cannot be deemed “minor

defects.” Thus, even if the mailbox rule could be applied to defendants’ motion, there is no evidentiary support in the record for defendants’ assertion that their motion to transfer venue was filed by mail on August 22, 2016. Since defendants’ motion to transfer venue was file-stamped by the clerk on August 29, 2016, more than 30 days after they were required to answer plaintiff’s complaint, they have waived objections of improper venue pursuant to section 2-104(b) of the Code. The trial court properly denied defendants’ motion.

¶ 16 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 17 Affirmed.