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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GMAC INSURANCE COMPANY, A/S/O)	Appeal from the Circuit Court
AUSTIN E. GREEN,)	of Cook County.
)	
Plaintiff-Appellant,)	
)	No. 02 M2 2471
v.)	
)	
MICHAEL FADIDA,)	The Honorable
)	Jeffrey L. Warnick,
Defendant-Appellee.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Although the trial court erred in considering the time period during which the default judgment was in effect in assessing whether the plaintiff was reasonably diligent in serving the defendant under Supreme Court Rule 103(b), the trial court's grant of the defendant's Rule 103(b) motion to dismiss was affirmed where the plaintiff failed to prove by affidavit or other competent evidence that the delay in service was justified under the circumstances.

¶ 2 Plaintiff, GMAC Insurance Company, as subrogee of Austin E. Green, appeals from the trial court's dismissal of its complaint for negligence against defendant, Michael Fadida, and the trial court's denial of plaintiff's motion to reconsider the dismissal of the complaint. The trial

court dismissed plaintiff's complaint, finding that plaintiff was not reasonably diligent in obtaining service pursuant to Supreme Court Rule 103(b) (eff. July 1, 2007). Plaintiff argues that the trial court's conclusion that it was not reasonably diligent in obtaining service was erroneous, because the trial court considered the time period during which a default judgment on the complaint was in place. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4

On June 7, 2002, plaintiff filed its negligence complaint against Fadida. In that complaint, plaintiff alleged that, on June 9, 2000, Fadida was negligent in the operation of his vehicle, causing his vehicle to collide with the vehicle of Austin Green, which resulted in damage to Green's vehicle. A summons was issued the same day. The record does not indicate what, if any, action was taken with that summons. A month later, on July 8, 2002, an alias summons was issued. It was returned by the sheriff as having not been served, with the notation that Fadida's name was not listed on the mailboxes and that the name on the mailbox for the apartment identified in the alias summons was "Caspi." On August 13, 2002, plaintiff requested and the trial court permitted the appointment of a special process server. A week later, on August 20, 2002, a second alias summons was issued. The record does not reflect what, if any, action was taken with the second alias summons. On October 1, 2002, a third alias summons was issued. Again, the record does not reflect what, if any, action was taken on the third alias summons. On November 15, 2002, a fourth alias summons was issued, and the record does not reflect what, if any, action was taken on it. The June 7, 2002, and October 1, 2002, summonses did not list an address for Fadida, while the July 8, 2002, August 20, 2002, and November 15, 2002, summonses all listed the same address in Northbrook, Illinois.

¶ 5 On January 22, 2003, an alias summons directed to the Secretary of State was issued. The record does not contain any motion filed by plaintiff requesting the issuance of an alias summons to the Secretary of State or leave to serve Fadida in that manner, nor does the record reflect what, if any, action was taken with this alias summons. On April 10, 2003, however, an order was entered setting the matter for status. In that order, the trial court noted that Fadida had been served but had not filed an appearance. The order did not elaborate on the details of the service of Fadida, and the record does not contain an affidavit of service evidencing service.

¶ 6 On May 22, 2003, without any precipitating motion in the record, the trial court set the matter for prove up. Then, on June 26, 2003, again without any precipitating motion, the trial court entered an *ex parte* default judgment against Fadida in the amount of \$21,224.79.

¶ 7 In March 2017, Fadida died. Thereafter, on June 19, 2017, plaintiff filed a petition to revive the judgment against Fadida. Fadida's estate ("the estate") filed a response and a motion to vacate the judgment on the basis that Fadida was never properly served with the complaint. Following briefing by the parties, on November 1, 2017, the trial court found that there was insufficient evidence in the record demonstrating that Fadida was properly served and entered an order quashing service on Fadida and vacating the default judgment.

¶ 8 After the judgment was vacated, plaintiff filed a "Motion to Spread Death of Defendant of Record and for Issuance of Alias Summons to Estate." The trial court granted this motion, substituted the estate for Fadida as defendant, and directed that an alias summons be issued. Plaintiff claims on appeal that the estate was served on January 12, 2018, but the record does not support this contention. The pages of the record cited to by plaintiff are the alias summons itself, which was issued on January 12, 2018, not a return of service or affidavit of service. Moreover, the record indicates that on January 17, 2018, plaintiff requested and the trial court permitted the

appointment of a special process server—something that would have been unnecessary had the estate actually been served on January 12, 2018. In any case, the estate does not contest the validity of service on it, and the record indicates that the estate filed an answer and affirmative defenses to plaintiff’s complaint on January 16, 2018.

¶ 9 In May 2008, the estate filed a motion to dismiss plaintiff’s complaint on the basis that plaintiff had not been reasonably diligent in obtaining service of the complaint, as required under Rule 103(b). In support, the estate argued that proper service was never made on Fadida prior to the entry of the default judgment and that between the time the default judgment was entered and the time plaintiff filed its petition to revive the judgment, plaintiff took no action to correct service or prosecute its claim. In response, plaintiff argued in relevant part that the estate failed to establish a *prima facie* case that plaintiff did not exercise due diligence, because Fadida fraudulently and illegally manipulated his identity for the purpose of avoiding service. Following a hearing at which the trial court heard the arguments of the parties, the trial court granted the estate’s motion to dismiss, concluding that “the delay between the 2003 Judgment and the Petition to Revive Judgment, despite the Answer filed by the Administrator, supports the 103(b) dismissal.”

¶ 10 Plaintiff thereafter filed a motion to reconsider, arguing that it was improper for the trial court to consider the time during which the default judgment was in effect when assessing whether plaintiff exercised due diligence in obtaining service. After briefing by the parties, the trial court denied plaintiff’s motion to reconsider. In its order, the trial court stated that its denial of the motion to reconsider was based on its “reliance on *Burman v. Snyder*, 2014 IL App (1st) 130772 (2014), applying 103(b) motions to post judgment proceedings and the court’s application of the factors of [*Segal v. Sacco*, 136 Ill. 2d 282 (1990)].”

¶ 11 Plaintiff timely appealed.

¶ 12 ANALYSIS

¶ 13 On appeal, plaintiff argues that the trial court erred in dismissing its complaint, because it improperly considered the time that the default judgment was in effect when assessing whether plaintiff exercised reasonable diligence in obtaining service of the complaint. Although we agree that it was improper for the trial court to consider the time period during which the default judgment was in effect, we nevertheless conclude that the trial court's order dismissing plaintiff's complaint was proper under Rule 103(b).

¶ 14 Before delving into the merits of plaintiff's contention, we pause to note that the parties dispute the applicable standard of review. Plaintiff argues that we should apply a *de novo* standard of review, because the trial court's denial of plaintiff's motion to reconsider was based on its misapplication of existing law, *i.e.*, considering the time the default judgment was in effect in violation of the holding of *Primus Financial Services v. Walters*, 2015 IL App (1st) 151054. See *Bank of America, N.A. v. Ebro Foods, Inc.*, 409 Ill. App. 3d 704, 709 (2011). In contrast, the estate argues that we should apply an abuse-of-discretion standard of review, because such is the standard generally applied in reviewing dismissals pursuant to Rule 103(b). See *Emrikson v. Morfin*, 2012 IL App (1st) 111687, ¶ 12. We conclude that we need not resolve the parties' dispute over the standard of review. With respect to the question of whether the trial court erred in considering the time the default judgment was in effect in assessing plaintiff's diligence, we conclude that the trial court erred, no matter which standard of review is applied.

¶ 15 We turn now to the merits of plaintiff's contentions on appeal. Supreme Court Rule 103(b) provides as follows:

“If the plaintiff fails to exercise reasonable diligence to obtain service on a defendant prior to the expiration of the applicable statute of limitations, the action as to that defendant may be dismissed without prejudice. If the failure to exercise reasonable diligence to obtain service on a defendant occurs after the expiration of the applicable statute of limitations, the dismissal shall be with prejudice as to that defendant only and shall not bar any claim against any other party based on vicarious liability for that dismissed defendant’s conduct. The dismissal may be made on the application of any party or on the court’s own motion. In considering the exercise of reasonable diligence, the court shall review the totality of the circumstances, including both lack of reasonable diligence in any previous case voluntarily dismissed or dismissed for want of prosecution, and the exercise of reasonable diligence in obtaining service in any case refiled under section 13-217 of the Code of Civil Procedure.”

The purposes of Rule 103(b) are to prevent unnecessary delay in the service of process and prevent the circumvention of statutes of limitation, which would deprive the defendant a fair opportunity to investigate the basis of claimed liability. *Segal*, 136 Ill. 2d at 286.

¶ 16 Upon moving for dismissal based on Rule 103(b), a defendant must establish a *prima facie* case that the plaintiff was not reasonably diligent in serving the defendant after filing suit. *Kole v. Brubaker*, 325 Ill. App. 3d 944, 949 (2001). There is no exact time frame that will cause the burden of proof to shift from the defendant to the plaintiff to explain his or her actions; instead, whether a defendant has established a *prima facie* case of a lack of diligence will be determined on a case-by-case basis. *Id.* “Once the defendant establishes that the time between the institution of the suit and the date of actual service is indicative of a lack of diligence in the absence of any patently unusual circumstances, the burden shifts to the plaintiff to demonstrate,

with specificity and in conformity with the rules of evidence, that reasonable diligence was exercised and to offer an explanation to satisfactorily justify any delay in service.” *Id.* at 949-50. The plaintiff’s explanation as to why the delay in service was reasonable and justified under the circumstances must come by way of an affidavit or other competent evidence. *Id.* at 950.

¶ 17 In determining whether to grant or deny a motion to dismiss based on Rule 103(b), the trial court must apply an objective standard of reasonable diligence in effectuating service, not a subjective standard that examines the intent of the plaintiff. *Id.* Each case must be decided on its own facts. *Id.* Our supreme court has provided the following guidance:

“Different factors which a court may consider in determining whether to allow or deny a Rule 103(b) motion include, but are not limited to, (1) the length of time used to obtain service of process; (2) the activities of plaintiff; (3) plaintiff’s knowledge of 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 pendency of the action as a result of ineffective service; (6) special circumstances which would affect plaintiff’s efforts; and (7) actual service on defendant. [Citations.] These factors must be considered in light of the purpose of Rule 103(b).”

Segal, 136 Ill. 2d at 287. These seven factors are commonly referred to as the *Segal* factors.

¶ 18 Plaintiff first argues that the estate failed to establish a *prima facie* case that plaintiff was not reasonably diligent in obtaining service, because the estate argued—and the trial court accepted—that plaintiff’s failed to take any action to correct service or prosecute its claim between the time the default judgment was entered in 2003 and the time it was vacated in 2017. Plaintiff relies on the case of *Primus Financing* in arguing that the period during which the default judgment was in effect should not be considered in assessing whether plaintiff was

reasonably diligent. We agree that *Primus* prohibits the consideration of the time period during which the judgment was in effect.

¶ 19 In *Primus*, a default judgment was entered against the defendant on the plaintiff's breach of contract complaint in 2000. *Primus*, 2015 IL App (1st) 151054, ¶ 5. In 2013, the plaintiff filed a petition to revive the judgment. *Id.* at ¶ 6. In response, the defendant filed a motion to quash service and vacate the default judgment, arguing that service was never properly made on him. *Id.* The trial court agreed, vacating the default judgment and quashing service of the underlying complaint on May 7, 2014. *Id.* at ¶ 7. Thereafter, the defendant was personally served with the complaint and the matter proceeded to a bench trial, after which judgment was entered against the defendant. *Id.* at ¶¶ 7-8.

¶ 20 On appeal, the defendant argued in part that the plaintiff's complaint should have been dismissed under Rule 103(b), because the plaintiff did not properly serve the defendant until 2014, despite having filed the complaint in 2000. *Id.* at ¶ 17. The plaintiff, like plaintiff in the present case, argued that the time period during which the default judgment was in place should not be used in calculating the length of the delay in service, because it was entitled to rely on the judgment while it was in effect. *Id.* at ¶ 23. According to the plaintiff, subtracting the time during which the default judgment was in effect left only 2 ½ months between the filing and service of the complaint—a delay that was not long enough to show a lack of reasonable diligence. *Id.* The appellate court agreed, concluding that a rule that permitted the inclusion of the time period during which the judgment was in effect in calculating the length of the delay in service would not make sense, as no plaintiff would have any reason to attempt service on a defendant while a judgment was in effect. *Id.* at ¶ 24.

¶ 21 The decision in *Primus* is directly on point. Like in *Primus*, the default judgment here was vacated following a conclusion that the initial service was improper. Like the plaintiff in *Primus*, plaintiff here would have had no reason to continue to attempt service on Fadida after the entry of the judgment. Nevertheless, in concluding that plaintiff was not reasonably diligent in obtaining service, the trial court considered and specifically relied on the 14-year gap between the entry of the default judgment in 2003 and the order vacating that judgment in 2017. We conclude that this was error based on the clear holding of *Primus*. In so concluding, we note that the trial court's reliance on *Burman* was misplaced, as the holding in *Burman* did not speak to the issue of whether the time during which a judgment is in effect should be considered in assessing the diligence of a plaintiff in serving a complaint. Rather, *Burman* merely stated—and only in *dicta*—that Rule 103(b)'s requirement that a plaintiff be diligent in serving a defendant applied to proceedings to revive a judgment. *Burman*, 2014 IL App (1st) 130772, ¶ 23. In other words, a plaintiff seeking to revive a judgment must be as diligent in serving the petition to revive as he or she is in serving an initial complaint.

¶ 22 Although we agree with plaintiff that it was improper for the trial court to consider the time period during which the default judgment was in effect in assessing plaintiff's diligence in obtaining service, we disagree that our resolution of this issue is conclusive as to whether the estate established a *prima facie* case of a lack of diligence or whether the trial court erred in granting the motion to dismiss. We must assess whether, even if we disregard the period during which the default judgment was in effect, the trial court was otherwise justified in granting the motion to dismiss pursuant Rule 103(b). See *Christian v. Lincoln Automotive Co.*, 403 Ill. App. 3d 1038, 1044 (2010) (stating that the appellate court may affirm a trial court's decision on a Rule 103(b) motion to dismiss on any basis supported by the record). We note that plaintiff's

contention that a *de novo* standard of review applied was directed only at the issue of whether it was proper for the trial court to consider the time period during which the default judgment was in effect; plaintiff did not dispute that a trial court's grant of a Rule 103(b) motion to dismiss is typically reviewed for an abuse of discretion. Accordingly, because we now review the trial court's general decision to grant the estate's motion to dismiss, we will apply the usual abuse-of-discretion standard.

¶ 23 The calculation of the time that elapsed between filing and proper service in this case is complicated by the paucity of the record on appeal. As discussed above, plaintiff contends that the estate was properly served on January 12, 2018, but the record does not support that. Given that the primary issues in this case have revolved around proper service of Fadida, one would think that plaintiff would be quite diligent in making sure that the record reflected proper and timely service on the estate. Nevertheless, just as it did with its claimed service of Fadida prior to the entry of the default judgment, plaintiff also failed to include in the record *any* proof of service on the estate. Plaintiff would certainly be well served in the future—and could probably avoid litigation such as this—if it were more diligent in making sure that proper proof of service, as required by Supreme Court Rule 102(d) (eff. Jan. 1, 2018), is filed with the Clerk of the Circuit Court. Because, however, the estate has not made any contention that it was not served, and because the estate filed an answer and affirmative defenses to the complaint and otherwise participated in the litigation of this case, we will assume that service was actually made on the estate. Moreover, we will give plaintiff the benefit of the doubt and assume that service was made sometime between January 12, 2018, when the alias summons on the estate was issued, and January 16, 2018, when the estate filed its answer and affirmative defenses.

¶ 24 Operating on these assumptions, even putting aside the fourteen years during which the default judgment was in effect, 15 months elapsed between the time the complaint was filed and the time that it was properly served.¹ We conclude that this time period was sufficient to establish a *prima facie* case that plaintiff was not reasonably diligent in obtaining service on Fadida or the estate. Although the record demonstrates that plaintiff sought a number of alias summonses, it does not demonstrate any unusual circumstances that resulted in an inability to serve those alias summonses. In fact, based on the record before us, we have no idea whether plaintiff took any action on any of the summonses or alias summonses issued. Aside from the first alias summons issued on July 8, 2002, which was returned because the name on the mailbox did not match the name on the summons, there is no indication on the record of what happened with any of the other summonses. There are no other returns of service, motions for subsequent summonses, or transcripts that offer any explanation for the multiple summonses or the delay in service. All the summonses that included an address for Fadida included the same address. Thus, it appears plaintiff made no attempts to identify a different address for Fadida or to serve Fadida at a different location. For all we know based on this record, the multiple summonses issued for Fadida at the same address could have been a result of plaintiff being lax or forgetful in seeking service prior to the summonses' return dates. Accordingly, based on this record, which does not demonstrate any "patently unusual circumstances," the estate established a *prima facie* case of a lack of diligence on the part of plaintiff. See *Mular v. Ingram*, 2015 IL App (1st) 142439, ¶ 22 ("Nearly one year elapsed between the date Mular's lawsuit was filed and the date Ingram was served. This was sufficient to shift to Mular the burden of establishing that she acted

¹ June 7, 2002 (filing of the complaint), through June 26, 2003 (entry of the default judgment), is 12 ½ months. November 1, 2017 (entry of the order vacating the judgment), through mid-January 2018 (when the estate was purportedly served) is 2 ½ months. Together, they total 15 months.

with reasonable diligence.”); *Emrikson*, 2012 IL App (1st) 111687, ¶ 18 (even putting aside the five-month period during which the motion to quash service was pending, the seven months between filing and service raised an inference of a lack of diligence in obtaining service); *Kole*, 325 Ill. App. 3d at 949 (finding a *prima facie* case was established where nine months elapsed between the filing and service of the complaint and the record did not disclose any unusual facts that would have prevented or hindered service).

¶ 25 Because the estate presented a *prima facie* case that plaintiff lacked diligence in obtaining service, the burden shifted to plaintiff to prove, by way of affidavit or other competent evidence, that the delay in service was justified under the circumstances. See *Kole*, 325 Ill. App. 3d at 949-50. On appeal, plaintiff argues that even if the estate did establish the necessary *prima facie* case, the seven *Segal* factors do not support a conclusion that plaintiff was not reasonably diligent, because Fadida hid his identity in an attempt to avoid service, plaintiff appeared in court seven times prior to the entry of the default judgment, multiple summonses were issued and a special process server was appointed, and service was ultimately made prior to April 2003. Plaintiff does not, however, actually address or discuss how these contentions relate to the *Segal* factors. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (requiring that the argument section of appeals briefs “shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on”); *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009) (“The failure to assert a well-reasoned argument supported by legal authority is a violation of Supreme Court Rule 341(h)(7) [citation], resulting in waiver.”).

¶ 26 Nevertheless, taking first plaintiff’s contention that Fadida actively attempted to hide his identity to avoid service, plaintiff specifically alleges that Fadida left the country after the motor vehicle accident and changed his last name to Caspi. Thereafter, plaintiff alleges, Fadida

obtained a U.S. passport under his new name, obtained a social security card under his new name, and misrepresented his true birth surname in matrimonial filings in Lake County, Illinois. Plaintiff made similar allegations in the trial court. Neither in the trial court nor on appeal, however, did plaintiff provide any evidence in support of these factual contentions. In the trial court, plaintiff did not attach to its response to the estate's motion to dismiss or to its motion to reconsider any documentary evidence supporting these allegations, nor did the plaintiff attach any affidavits attesting to these alleged facts. In addition, the record on appeal does not contain any transcripts of any hearings in the trial court at which plaintiff might have presented evidence of these alleged facts. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (“[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.”).

¶ 27 On appeal, plaintiff does not identify any evidentiary support in the record for these factual allegations, and instead only cites to the allegations as they appear in plaintiff's motion to reconsider. Given that plaintiff was required to prove its diligence by affidavit or other competent evidence but completely failed to present any evidence whatsoever in support of these allegations, they are properly disregarded. Moreover, we note that there is nothing inherently improper about leaving the country or changing one's name. Other than the conclusory allegation that Fadida did both in an attempt to avoid service, plaintiff has not alleged any facts—much less supported them with evidence—that would indicate that Fadida's departure and name change were in any way related to the present suit or plaintiff's attempts to serve him.

¶ 28 As for plaintiff's remaining contentions—that plaintiff appeared in court seven times prior to the entry of the default judgment, multiple summonses were issued and a special process server was appointed, and service was ultimately made prior to April 2003—without more, we do not see how they sway any of the *Segal* factors in plaintiff's favor. The record supports plaintiff's contention that it appeared in court seven times prior to the entry of the default judgment, but there is nothing in the record that indicates that these appearances somehow advanced or evidenced plaintiff's diligence in making service on Fadida. It appears from the record that some of these appearances were for the purpose of updating the trial court on the status of serving Fadida, but absent transcripts of these appearances, we have no idea what plaintiff represented to the trial court. We do not know whether plaintiff informed the trial court of difficulties it encountered in trying to serve Fadida or if it simply made excuses for having failed to do anything with the issued summonses. The appearances in and of themselves did nothing to advance service on Fadida.

¶ 29 Similarly, plaintiff's contention that multiple summonses were issued and a special process server was appointed is true, but absent some evidence connecting this fact to one of the *Segal* factors, it is irrelevant. As previously discussed, the record is devoid of any evidence demonstrating that plaintiff actually did anything with these multiple summonses or that the special process server actually made any attempt to serve Fadida. Based on the record before us, all we are able to conclude is that summonses were issued and a special process server was appointed—nothing else. This, by itself, does nothing to advance plaintiff's claim that it was reasonably diligent in obtaining service.

¶ 30 Finally, plaintiff argues that service was ultimately obtained on Fadida prior to April 2003. We recognize that the trial court's order of April 10, 2013, stated that Fadida had been

served. The record, however, does not contain any proof of service on Fadida whatsoever, much less any evidence that Fadida was properly served. The record also does not contain any transcripts of proceedings that would shed light on the trial court's conclusion that Fadida had been served. These deficiencies in the record likely explains the trial court's subsequent decision in November 2017 to quash service on the basis that there was insufficient evidence in the record that Fadida had been properly served. Plaintiff has not made any argument on appeal that the trial court erred in its decision to quash service based on insufficient evidence of proper service. Accordingly, because any service on Fadida that might have been made prior to April 2003 was quashed because it was not proper—or at least there was insufficient evidence that it was proper—it does not persuade us that plaintiff exercised diligence in properly serving Fadida prior to the entry of the default judgment.

¶ 31 We note once again that plaintiff's failure to build and maintain a clear and complete record in the trial court seems to have precipitated and perpetuated the primary issues in this case. Had plaintiff made an effort to document its attempts to serve Fadida and to file proof of proper service on Fadida in 2003, the original service of Fadida likely would not have been quashed, the default judgment vacated, and plaintiff's claim dismissed under Rule 103(b). Even after the trial court quashed the 2003 service and vacated the default judgment, plaintiff had the opportunity to present evidence that it had, in fact, been diligent in serving Fadida prior to the entry of the default judgment. Instead of presenting evidence of its claimed numerous attempts of service, Fadida's alleged evasion of service, and plaintiff's claimed proper service in 2003, plaintiff chose to let the severely deficient record stand and to rely on unsupported accusations and claims. Plaintiff had complete and sole control throughout the duration of this matter to provide the documentation and evidence necessary to prove that it was diligent in attempting and

obtaining proper service on Fadida. Despite this, plaintiff failed to do so and then continued its failure to properly document its service attempts when it failed to file proof of service on the estate. It should come as no surprise to plaintiff, then, that its lack of success on appeal can also be attributed to the significant deficiency in the record.

¶ 32 Overall, plaintiff failed to carry its burden of demonstrating that the delay in obtaining service was justified under the circumstances. Plaintiff failed to present any affidavits or evidence in support of its factual contentions, failed to discuss any of the *Segal* factors, and generally failed to demonstrate that it acted diligently.

¶ 33 In sum, although we agree that the trial court erred in considering the time period during which the default judgment was in effect in assessing the diligence of plaintiff in obtaining service, we nevertheless conclude that the trial court properly granted the estate's Rule 103(b) motion to dismiss, because the estate established a *prima facie* case of a lack of diligence by plaintiff and because plaintiff failed to prove, by affidavit or other competent evidence, that the delay in service was justified under the circumstances.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 36 Affirmed.