

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MONTEGO EL XAYMAKALI BEY,

Plaintiff,

v.

Case No: 6:17-cv-2144-Orl-18DCI

PETER MCINTYRE, TRICIA
LAVERNE GUMBS, JEFFERY L.
ASHTON and TIMOTHY EVANS,

Defendants.

REPORT AND RECOMMENDATION

This cause comes before the Court for consideration without oral argument on the following motion:

MOTION: MOTION FOR EXTENSION TIME FOR SERVICE (Doc. 47)

FILED: September 5, 2018

THEREON it is RECOMMENDED that the motion be DENIED.

On December 15, 2017, Plaintiff filed the Complaint. Doc. 1. That Complaint names, among others, Jeffery L. Ashton and Tricia Laverne Gumbs as defendants. *Id.*

As of June 21, 2018, Plaintiff had not served Ashton or Gumbs with service. Thus, on that date, the Court entered an Order requiring Plaintiff to show cause in writing within fifteen days of that Order why the Complaint should not be dismissed without prejudice as to those defendants pursuant to Federal Rule of Civil Procedure 4(m) for failure to prosecute. Doc. 39. Plaintiff never responded to the Order to Show Cause, and that Order remains pending.

Now, on September 5, 2018, Plaintiff filed a motion seeking an unspecified extension of time within which to serve Ashton and Gumbs. Doc. 47 (the Motion). As cause, Plaintiff asserts that he paid a process server, but that the process server has been unable to perfect service. *Id.* Plaintiff asserts that he has obtained new addresses and that he would like additional time to attempt service again. *Id.* The affidavits of service attached to the Motion show that service was last attempted as to Ashton on December 18, 2017 and as to Gumbs on January 5, 2018. Plaintiff also makes a passing request to add two, new defendants to this action, both state court judges. *Id.*

The Rules governing this Court provide that:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

Here, the Court entered an Order to Show Cause warning that the Complaint would be dismissed without prejudice against Ashton and Gumbs if Plaintiff failed to respond in writing and show cause why Plaintiff had not served those defendants within the time provided by Rule 4(m). Doc. 39. Plaintiff failed to respond to that Order. Indeed, according to the documentation attached to the Motion, more than nine months have passed since Plaintiff even attempted service in this case. Given that extensive delay, Plaintiff has failed to state good cause in the Motion for any further extension. Accordingly, due to Plaintiff's failure to respond to the Order to Show Cause, Plaintiff's unexplained and significant delay in seeking an extension or otherwise serving the defendants at issue, and the lack of good cause stated in the motion, the undersigned respectfully recommends that the Court deny the Motion and dismiss the Complaint without prejudice as to Ashton and Gumbs. As to the perfunctory and unsupported request to add two state court judges

to the Complaint as defendants, it is respectfully recommended that that request be denied for a failure to comply with Local Rule 3.01(a).

It is respectfully recommended that the Motion (Doc. 47) be **DENIED** and the Complaint be dismissed as to Defendants Jeffery L. Ashton and Tricia Laverne Gumbs.

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.

Recommended in Orlando, Florida on September 18, 2018.



DANIEL C. IRICK
UNITES STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge
Counsel of Record
Unrepresented Party
Courtroom Deputy