

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

WALTER T. DUNNING,

Plaintiff,

v.

Case No.: 2:24-cv-93-SPC-NPM

ARTURO GONZALES and JESUS
RAMOS,

Defendants.

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OPINION AND ORDER

Before the Court are Defendants' Motion to Dismiss (Doc. 6) and Plaintiff's Response in Opposition (Doc. 7). For the below reasons, the Court denies Defendants' motion.

Plaintiff is unrepresented and moved to proceed without prepaying fees or costs (Doc. 2). The Court granted the motion to the extent that Plaintiff meets 28 U.S.C. § 1915(a)'s poverty requirement but ordered Plaintiff to amend his complaint. (Doc. 4). The Court also stayed the service-of-process provision in 28 U.S.C. § 1915(d) and Rule 4(m) to allow the Court a chance to review the amended complaint before the case proceeds. Plaintiff has since filed an amended complaint. (Doc. 5).

Before the Court could screen the amended complaint, however, Defendants moved to dismiss. They argue that Plaintiff has not properly served them. According to Defendants, Plaintiff hand delivered the amended complaint to the Fort Myers Police Department. But whether this was proper service of process is irrelevant. As Defendants confusingly acknowledge, the Court has stayed the service-of-process provision in 28 U.S.C. § 1915(d) and Rule 4(m). Plaintiff currently is under no obligation to serve Defendants until the Court reviews his amended complaint and orders otherwise. So, failure to properly serve cannot provide a basis to dismiss at this stage.

Accordingly, it is now **ORDERED**:

Defendants' Motion to Dismiss (Doc. 6) is **DENIED without prejudice**.

DONE and ORDERED in Fort Myers, Florida on September 11, 2024.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record