

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted November 21, 2023*

Decided November 22, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1457

TINA SCHINGECK,
Plaintiff-Appellant,

v.

DENIS R. McDONOUGH, Secretary of
Veterans Affairs,
Defendant-Appellee.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 22-CV-373

William E. Duffin,
Magistrate Judge.

ORDER

Tina Schingeck, a former nurse for the Department of Veterans Affairs, sued her employer for discrimination. *See* 42 U.S.C. § 2000e-2. Despite receiving more time for and instructions on how to serve process, Schingeck failed to do so. A magistrate judge,

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

proceeding with the parties' consent, 28 U.S.C. § 636(c), permissibly dismissed her case for lack of service. *See* FED. R. CIV. P. 4(m), 12(b)(5). Thus we affirm.

Because Schingeck sued the Secretary of Veterans Affairs in his official capacity, she had to serve the complaint and summons on both the Secretary's Department and the United States within 90 days of filing suit. *See* FED. R. CIV. P. 4(i), (m). To serve the United States, Schingeck needed to send these documents to two places: the United States Attorney for the Eastern District of Wisconsin (where she sued) and the Attorney General of the United States. *See id.*; *McMasters v. United States*, 260 F.3d 814, 817 (7th Cir. 2001). The court's clerk twice sent Schingeck these rules about service.

The case did not proceed as Schingeck expected. The court dismissed her complaint for failure to state a claim and gave her leave to amend it, which she did. But by then the 90-day deadline to serve the defendant had passed, *see* FED. R. CIV. P. 4(m), prompting the Secretary to move to dismiss the suit for failure to serve. *See* FED. R. CIV. P. 12(b)(5). He noted that more than six months had elapsed since Schingeck sued and she had not served process in accord with the Federal Rule of Civil Procedure 4(i)(1), (2). Among other problems, she never sent the summons and complaint (or amended complaint) to the United States Attorney or Attorney General. Schingeck opposed the motion. She explained that she had not followed the clerk's instructions about service because she thought that sending the documents as she had to the Department was enough. She also asked for leave to file a second amended complaint.

The court initially denied the motion to dismiss. It reasoned that the court might have confused Schingeck when, in an earlier ruling, it invited her to amend her complaint. Accordingly, it gave her 30 more days to serve the defendants, explained again how to do so, and told her that it would consider her motion to file a second amended complaint once she completed service. The court warned her that "failure" to serve as instructed within 30 days "may result in her case being dismissed."

After the 30 days passed without service, the Secretary again moved to dismiss. He argued that Schingeck had still not sent the summons and complaint to the Attorney General and relevant United States Attorney. The court granted the motion. It observed that it had told Schingeck how to serve and warned her that failure to do so within 30 days could result in dismissal. It also denied her motion to amend her complaint.

On appeal, Schingeck challenges these rulings. She does not deny that she failed to complete service; indeed, in her reply brief, she concedes that the court had authority

to grant the motion to dismiss. Instead, she argues that the court abused its discretion (the applicable standard of review, *Jones v. Ramos*, 12 F.4th 745, 749 (7th Cir. 2021)) by not forgiving her failure to serve. She contends that the rules about service are not designed for pro se litigants like her. And, she adds, the district court had ruled that she plausibly alleged discrimination under Title VII. But all litigants who bring plausible claims, even those proceeding pro se, must follow procedural rules, including service requirements. See *McMasters*, 260 F.3d at 818. The court's clerk explained those rules to Schingeck twice. And the district court, in granting her a reasonable extension of 30 more days and recognizing her limitations as a pro se litigant, explained them again. Because those rules were carefully laid out for her, and they are among the lawfully established requirements "for gaining access to the federal courts," a court cannot out of lenience disregard them. *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 152 (1984). For "in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *McNeil v. United States*, 508 U.S. 106, 113 (1993) (citing *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980)). Thus, the district court did not abuse its discretion in dismissing this suit. And, in properly dismissing the suit, it permissibly denied Schingeck leave to file a second amended complaint.

AFFIRMED