

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**RECARDO HOLMES,
GDC ID # 182963,**

Plaintiff,

v.

1:09-cv-3267-WSD-AJB

OFFICER STOVALL,

Defendant.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Alan J. Baverman’s Non-Final Report and Recommendation (“R&R”) [25] regarding Plaintiff’s two Motions for Summary Judgment [18, 20].

I. BACKGROUND

On November 19, 2009, Recardo Holmes (“Plaintiff”) filed a Civil Rights Complaint pursuant to 42 U.S.C. § 1983. On November 15, 2010, Plaintiff filed a Motion for Summary Judgment [18]. On January 6, 2011, Plaintiff filed a second Motion for Summary Judgment [20].

On May 16, 2011, the Court ordered Plaintiff to show cause why the actions should not be dismissed due to failure to timely serve the Complaint upon

Defendant [21]. On May 27, 2011, Plaintiff provided information regarding Defendant and why service had not been made [22]. On June 14, 2011, the Court issued a Non-Final R&R on the Plaintiff's motions and ordered the Clerk to prepare and mail Defendant a service package and Waiver of Service [24, 25].

As noted in the R&R [25], Plaintiff's motions for summary judgment are based on Defendant's failure to be served with and respond to the Complaint in this matter. Since the filing of the Plaintiff's motions for summary judgment [18, 20] and issuance of the R&R [25], Defendant has accepted service, through his attorney, and an appearance in the case has been made by counsel [27, 28]. An answer to the Complaint is due from Defendant by August 26, 2011.

II. DISCUSSION

A. Standard of Review on the Magistrate Judge's R&R

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). Because no objections to the R&R have been filed, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984).

The Court finds that it cannot grant summary judgment based on a claim of lack of service upon a defendant.¹ There being no objection to the findings or recommendations in the R&R [25], and having reviewed them and finding no plain error, the Court adopts them.


III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that the Court **ADOPTS** the Magistrate Judge's Non-Final R&R [25].

IT IS HEREBY FURTHER ORDERED that the Plaintiff's Motions for Summary Judgment [18, 20] are **DENIED**.

SO ORDERED this 8th day of August, 2011.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE

¹ “Generally, where service of process is insufficient, the court has no power to render judgment and the judgment is void.” In re Worldwide Web Sys., 328 F.3d 1291, 1299 (11th Cir. 2003).