

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7013

CURTIS HILL,

Plaintiff - Appellant,

v.

M. BRECKON, Warden; UNITED STATES OF AMERICA,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. David C. Norton, District Judge. (0:19-cv-02145-DCN)

Submitted: May 26, 2022

Decided: June 27, 2022

Before THACKER and HEYTENS, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Curtis Hill, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Curtis Hill, a federal prisoner, alleges his cell was flooded with sewage, leading prison staff to shut off the water for three days and leaving him “without water or [an] operable toilet.” D. Ct. ECF 1 at 4. Acting pro se, Hill filed this lawsuit against the warden contending the incident created “an unreasonable risk to [his] health and safety.” *Id.* at 5.

When suing a United States officer in his individual capacity—as Hill has here—a plaintiff must serve the officer personally *and* the United States (via the U.S. Attorney for the district where the suit has been filed and the Attorney General). See Fed. R. Civ. P. 4(i).^{*} The magistrate judge assigned to this case directed Hill to complete service forms for all three. Hill complied, and the district court issued the summons and directed the U.S. Marshals Service to accomplish service within 90 days.

The marshals successfully served the Attorney General, but were unable to reach the warden at the address Hill gave. Although that address was a P.O. Box that the Bureau of Prisons’ website lists for staff mail at Hill’s facility, it appears the warden had since retired. The court ordered Hill to provide “information sufficient to locate” the warden. D. Ct. ECF 18 at 1. Hill responded with a new proposed summons trying a new address for the warden, but pointed out “that [it] is against [Bureau of Prisons] Policy for [Hill] to have personal information that could interfere with institutional duty or . . . for [him] to have staff address[es].” D. Ct. ECF 20-2.

^{*} The magistrate judge also added the United States as a defendant after concluding the complaint potentially asserted a claim under the Federal Tort Claims Act.

Hill's second address proved no more effective and, in the meantime, it became clear that Hill had also attempted to serve the wrong U.S. Attorney's office. The court again ordered Hill to provide "information sufficient to identify and locate the defendants" and explained that, as the 90-day window for service had long since passed, Hill would also need to file a motion for an extension of time to accomplish service. D. Ct. ECF 24 at 1–2. Hill responded with a letter expressing confusion about what he was supposed to do, without following up on the district court's direction to request an extension of time.

The magistrate judge then recommended dismissing the case. The primary basis for dismissal was that Hill had "failed to follow the court's instructions by providing a street address at which [the warden] can be served" or a service form for the appropriate U.S. Attorney. D. Ct. ECF 30 at 4. The recommendation also cited Hill's failure to request an extension of time. The district court fully adopted the recommendation and dismissed the case.

We express no opinion as to whether Hill was required to provide more information than he did regarding the warden. Because prison officials have entirely legitimate policies against disclosing personal contact information to inmates, we recognize it will often be "unreasonable to expect incarcerated and unrepresented prisoner-litigants to provide the current addresses of prison-guard defendants who no longer work at the prison." *Richardson v. Johnson*, 598 F.3d 734, 739–40 (11th Cir. 2010). There was also no serious question (because Rule 4 requires it) that Hill was trying to serve the U.S. Attorney in South Carolina, nor would it have been difficult for the marshals to locate that office. Had

Hill requested an extension of time to accomplish service, he likely would have been entitled to one. See *Brooks v. Johnson*, 924 F.3d 104, 120–21 (4th Cir. 2019).

But Hill never made such a motion despite the district court’s clear instruction to do so. And Rule 4 provides that a court “must dismiss” a complaint against an unserved defendant once the time for service has elapsed absent a showing of “good cause” by the plaintiff. Fed. R. Civ. P. 4(m). On that basis alone, we affirm the judgment of dismissal without prejudice. We deny Hill’s motions to appoint counsel and for a transcript at government expense. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this Court and argument would not aid the decisional process.

SO ORDERED