

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

WENDY WILLIAMS,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 2:16-CV-160-WHA
) [WO]
 NICOLE DANIELS, et al.,)
)
 Defendants.)

MEMORANDUM OPINION and ORDER

This case is before the court on a Recommendation of the Magistrate Judge entered on November 4, 2016 (Doc. #21) and the Plaintiff's Objection thereto (Doc. #28). The previous Order and Opinion and Final Judgment are due to be vacated, and the court will consider the Plaintiff's Objection to the Recommendation.

The Magistrate Judge recommended that this case be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

The Plaintiff filed her case on March 11, 2016, and on June 16, 2016 mailed a summons to each defendant. Three of the four summons were returned unexecuted on July 14, 2016, marked "return to sender." The fourth was never returned. On August 18, 2016, the Magistrate Judge issued a show cause order, giving the Plaintiff additional time in which to perfect service, until September 30, 2106.

On November 4, 2016, the Magistrate Judge issued a Report and Recommendation finding that Williams received notice that service was unexecuted on July 14, 2016, but there was no indication that she attempted to perfect service, nothing to indicate that the Defendants

had evaded service, and finding that an additional extension of time was not warranted. After the objection deadline passed on November 18, 2016, with no objection from the Plaintiff, this court issued an opinion and judgment adopting the report and recommendation. It was only on December 8, 2016, that Williams filed something in this court, stating that she did not receive a copy of the Report and Recommendation. This court, therefore, allowed her to file an objection.

In her objection, Williams has not claimed that she was not aware of her obligations to effect service under Rule 4(m) and she does not claim that she did not receive the Magistrate Judge's show cause order in August commanding her to perfect service by the end of September.

Rule 4(m) grants discretion to the district court to extend the time for service of process even in the absence of a showing of good cause. In reviewing a district court's exercise of such discretion, courts look to the Advisory Committee Note to Rule 4(m) for guidance as to what factors may justify the grant of an extension of time for service of process in the absence of good cause. *Horenkamp v. Van Winkle And Co.*, 402 F.3d 1129, 1132–33 (11th Cir. 2005). Relief may be justified, for example, if the defendant is evading service or conceals a defect in attempted service. *Id.*

After *de novo* review of the objection and the file in this case, particularly that Williams has not claimed that she was not aware of her obligations to effect service under Rule 4(m), or given a reason for not complying with the Magistrate Judge's Order commanding her to perfect service by the end of September, and considering all relevant factors, the court finds the Objection to be without merit, and it is ORDERED as follows:

1. The Opinion and Order and Final Judgment (Doc. #22, 23) are VACATED.
2. Plaintiff's Objection is OVERRULED.
3. The court adopts the Recommendation of the Magistrate Judge.

4. Plaintiff's claims are DISMISSED without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.
5. Final Judgment will be entered accordingly.

Done this 9th day of August, 2017.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE