

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION

CEDRIC GLAZE

PLAINTIFF

v.

2:09CV00113HLJ

BOBBY MAY, et al.

DEFENDANTS

ORDER

This matter is before the Court on several pending motions filed by the parties.

1) Defendant Futrell's motion to set aside summons (DE #19) - Summons was returned, executed, with respect to defendant Futrell on September 18, 2009 (DE #13). In the present motion, defendant appears specially to contest such service, stating that while summons was accepted by an employee of the St. Francis County Sheriff's Department, defendant Futrell has not been employed there since June 29, 2009. Plaintiff objects to this, stating that in his motion, defendant erroneously refers to summons accepted by the Faulkner County Sheriff's Department.

The Court notes that while defendant's motion refers to the Faulkner County Sheriff's Department as his former employer, his brief correctly notes that the St. Francis County Sheriff's Department accepted summons and service on his behalf, months after his employment with them ended. Therefore, the Court finds defendant Futrell was not properly served as set forth in Fed.R.Civ.P. 5, and the Court will grant his motion to set aside the service. The Court will, however, direct defendants to provide the Court with the last-known address of defendant Futrell within ten days of the date of this Order.

2) Motions to dismiss and to stay discovery, filed by defendants Heard and Houston (DE ##29, 31). Defendants have filed a motion to dismiss plaintiff's complaint against them, as

frivolous. In light of such, they also request that discovery be stayed, until the motion to dismiss is resolved. Although plaintiff objects to this (DE #34), the Court agrees with the defendants and will grant the motion.

3) Plaintiff's motion for default judgment against defendants Houston and Heard (DE #34). In this motion, plaintiff asks the Court to enter a default judgment against these defendants, stating that although they were served with summons and a copy of the complaint on September 11, 2009, they have not filed an answer within twenty days as required by the Rules. The Court notes, however, that the twenty-day time limit for filing a responsive pleading was October 1, 2009, on which date defendants filed their motion to dismiss. Therefore, the Court finds that defendants timely responded to plaintiff's complaint, and will deny plaintiff's motion. The Court will also direct plaintiff to file a response to the defendants' motion.

The Court further notes that plaintiff originally filed this 42 U.S.C. § 1983 complaint and application to proceed in forma pauperis (IFP) while he was incarcerated at the Omega Center in Malvern, Arkansas. The Court granted plaintiff's IFP application by Order dated August 26, 2009, and directed him to file an amended complaint (DE #5). Following submission of such, the Court directed the issuance of summons and service on defendants on September 4, 2009 (DE #8). However, plaintiff has now notified the Court of a change in his address, which reflects a release from incarceration (DE #33). Therefore, in order to continue prosecuting this action in an in forma pauperis status, plaintiff must submit an updated IFP application with the Court. Accordingly,

IT IS, THEREFORE, ORDERED that the motion of defendant Futrell to set aside the summons and service (DE #19) is hereby GRANTED. Defendants shall provide to the Court the last-known address of defendant Futrell within ten days of the date of this Order.

IT IS FURTHER ORDERED that the motion of defendants Houston and Heard to stay discovery (DE #31) is hereby GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion for a default judgment against defendants Houston and Heard (DE #34) is hereby DENIED.

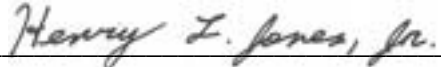
IT IS FURTHER ORDERED that plaintiff shall file a response to defendants' motion to dismiss (DE #29) within ten days of the date of this Order.

IT IS FURTHER ORDERED that plaintiff shall file an updated request to proceed in forma pauperis within ten days of the date of this Order.

Failure to comply with this Order shall result in the dismissal without prejudice of plaintiff's complaint. See Local Rule 5.5(c)(2).

The Clerk of the Court is directed to forward to plaintiff an in forma pauperis application.

IT IS SO ORDERED this 6th day of October, 2009.



United States Magistrate Judge