

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

CECIL A. COLES

PLAINTIFF

v.

No. 4:11-cv-272-DPM

**HERBERT L. HAHN, M.D., in his
official and individual capacities;
ORTHO ARKANSAS, P.A.; and
BAPTIST HEALTH**

DEFENDANTS

ORDER

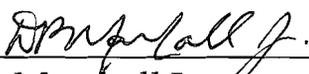
This case has gotten into a tangle – with Coles, a *pro se* plaintiff, seeking summary judgment and Baptist Health moving to dismiss – all because of an apparent mistake. Because Coles is proceeding *in forma pauperis*, the Court directed the United States Marshals Service to serve the summons and amended complaint, *Document No. 27*, on the newly named defendants (Ortho Arkansas and Baptist Health), and provided the addresses for their registered agents. *Document No. 33*. But it is now apparent that the Marshals Service mixed-up the addresses and never properly served Baptist. The competing motions – both grounded upon the faulty service – followed.

Both motions are denied because the fault for insufficient service lies with the Marshals Service, not Coles. “[A] plaintiff proceeding *in forma*

pauperis is entitled to rely upon service by the U.S. Marshals and should not be penalized for failure of the Marshal's Service to properly effect service of process, where such failure is through no fault of the litigant." *Rochon v. Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987) (italics added); see also *Lee v. Brotherhood of Maintenance of Way Employees – Burlington Northern System Federation*, 139 F.R.D. 376, 379 (D. Minn. 1991) (collecting similar cases). When Coles was granted *in forma pauperis* status, the responsibility for service became the Court's. See 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process. . . ."). Because Coles should not be penalized for the Marshals' mistake, and because the Court sees no real prejudice to the Defendants, the case should not meet an early fate based on this technicality.

Coles's motion for summary judgment, *Document No. 45*, and Baptist Health's motion to dismiss, *Document No. 47*, are denied. For good cause, the window for service is reopened. FED. R. CIV. P. 4(m). The United States Marshals Service is directed to serve the summons and amended complaint on Baptist Health through its registered agent, Russell D. Harrington, Jr., 9601 I-630, Exit 7, Little Rock, AR 72205, via certified mail, return receipt requested, and is further directed to file proof of service by 27 January 2012.

So Ordered.



D.P. Marshall Jr.
United States District Judge



12 January 2012