

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**AARON FLEMONS
ADC #119749**

PLAINTIFF

v.

Case No. 5:17-cv-00204-KGB/BD

LASONYA GRISWOLD, et al.

DEFENDANTS

ORDER

The Court has received the Partial Recommended Disposition submitted by United States Magistrate Judge Beth Deere (Dkt. No. 27). The Partial Recommended Disposition recommends that the claims against the Doe defendants, Lindsey Wingfield,¹ and defendant Cavallo be dismissed without prejudice (*Id.*, at 3). Plaintiff Aaron. Flemons filed objections to the Partial Recommended Disposition (Dkt. No. 31). Judge Deere subsequently amended the Partial Recommended Disposition to remove the recommendation that Ms. Wingfield be dismissed from this action (Dkt. No. 50). Mr. Flemons has filed three motions for extension of time seeking additional time to serve the Doe defendants and defendant Cavallo (Dkt. Nos. 28, 45, 57). On July 11, 2018, Mr. Flemons filed a motion for leave to amend complaint (Dkt. No. 58). For the reasons discussed below, the Court adopts in part and declines to adopt in part the amended Partial Recommended Disposition.

Mr. Flemons filed this action on August 7, 2017, pursuant to 42 U.S.C. § 1983, alleging that defendants violated his constitutional rights during his incarceration at the “East Area Regional Max unit” in Marianna, Arkansas (Dkt. No. 33, at 1).² On August 11, 2017, Judge Deere ordered Mr. Flemons to identify the Doe defendants so that they could be served within the 90-

¹ Ms. Wingfield was originally named as “Whitfield.”

² Mr. Flemons filed an amended complaint on February 7, 2018, and a supplemental complaint on May 7, 2018 (Dkt. Nos. 33, 46).

day period allowed by Rule 4(m) of the Federal Rules of Civil Procedure (Dkt. No. 3). Mr. Flemons has identified the Doe defendants in his latest motion for leave to amend complaint (Dkt. No. 58).

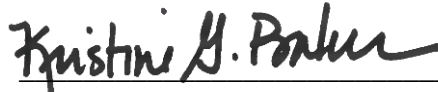
Further, the summons for separate defendant Cavallo issued by this Court was twice returned unexecuted (Dkt. Nos. 13, 25). Judge Deere directed Mr. Flemons to use the discovery process to determine defendant Cavallo's service address (Dkt. No. 26). Mr. Flemons has failed to provide a service address for defendant Cavallo, and the time for serving defendant Cavallo has passed.

Mr. Flemons argues that he has already provided defendant Cavallo's service address to the Court under seal (Dkt. No. 31, at 1). Per Rule 4(m), "[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). The Court notes that the summons issued to defendant Cavallo at the address under seal was returned unexecuted (Dkt. No. 25). The Court also notes that Mr. Flemons has not yet provided an additional or different service address for defendant Cavallo. Accordingly, the Court finds that Mr. Flemons has failed to serve defendant Cavallo within the 90-day limit set forth in Federal Rule of Civil Procedure 4(m). *See Carmona v. Ross*, 376 F.3d 829, 830 (8th Cir. 2004) (affirming the district court's dismissal of defendants named in original complaint who were not served within required time, but reversing dismissal of defendants named for the first time in an amended complaint, as plaintiff was entitled to additional time to serve those defendants).

After a review of the Partial Recommended Disposition, the Order amending the Partial Recommended Disposition, and Mr. Flemons' objections, as well as a *de novo* review of the

record, the Court adopts the amended Partial Recommended Disposition to the extent it dismisses Mr. Flemons' claims against defendant Cavallo (Dkt. No. 27). The Court therefore dismisses without prejudice Mr. Flemons' claims against defendant Cavallo. As Mr. Flemons has recently identified the Doe defendants, the Court declines to adopt the amended Partial Recommended Disposition to the extent it dismisses Mr. Flemons' claims against the Doe defendants (*Id.*). The Court denies as moot Mr. Flemons' motions for extension of time (Dkt. Nos. 28, 45, 57). Finally, the Court refers this matter back to Judge Deere for a ruling on the pending motion for leave to amend (Dkt. No. 58).

It is so ordered this 16th day of July, 2018.



Kristine G. Baker
United States District Judge