

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LAWRENCE A. MILLER,

Plaintiff,

v.

Case No: 2:16-cv-36-FtM-38MRM

CITY OF ARCADIA, FLORIDA,
ALICE FRIERSON, MARTHA
CRAVEN, ROBERT ALLEN and
ROBERT HINE,

Defendants.

OPINION AND ORDER¹

This matter comes before the Court on Plaintiff Lawrence Miller's Response to Court's Order to Show Cause ([Doc. 35](#)) filed on February 15, 2017. Plaintiff brought a civil rights action against Defendant City of Arcadia ([Doc. 1](#)) on November 23, 2015. On May 16, 2016, the Plaintiff filed an Amended Complaint ([Doc. 21](#)), adding four individual Defendants Robert Allen, Martha Craven, Alice Frierson and Robert Hine. Nine months later, the Court entered an Order to Show Cause ([Doc. 34](#)) why Plaintiff had not served the Defendants added in the Amended Complaint within the timeframe prescribed in [Rule 4\(m\)](#) of the Federal Rules of Civil Procedure. Plaintiff's limited efforts to comply with [Rule](#)

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4(m) hinge on communicating with City of Arcadia's counsel. (Doc. 35). Defendant City of Arcadia filed a Reply to Plaintiff's Response to Order to Show Cause (Doc. 37) and City of Arcadia's counsel explained he "has not represented he would accept service" and "does not represent any of those Defendants."

If a plaintiff fails to serve a defendant within ninety days after the complaint is filed, the court must dismiss the action without prejudice, unless good cause is shown. Fed. R. Civ. P. 4(m). Good cause requires the showing that some "outside factor" was the reason for failing to timely serve the defendants. *Lepone-Dempsey v. Carroll Cty. Comm'rs*, 476 F.3d 1277, 1282 (11th Cir. 2007). Inadvertence or negligence does not constitute good cause. See *id.*

Plaintiff asserts that the "delay was not intentional" and "was the result of excusable neglect" espoused under Rule 6(b) of the Federal Rules of Civil Procedure. (Doc. 35). Courts have "equated" the concepts of good cause and excusable neglect. *Madison v. BP Oil Co.*, 928 F. Supp. 1132, 1137 (S.D. Ala. 1996). "A showing of good cause requires at least 'excusable neglect.'" *Adams v. AlliedSignal Gen. Aviation Avionics*, 74 F.3d 882, 887 (8th Cir. 1996) (citations omitted); See also *Kersh v. Derozier*, 851 F.2d 1509, 1512 (5th Cir. 1988); *Lowe v. Hart*, 157 F.R.D. 550, 553 (M.D. Fla. 1994).

Here, no outside factor played a part in Plaintiff's failure to serve the four individual Defendants, and he fails to show otherwise. Plaintiff's actions were not diligent or reasonable under the circumstances. Nor did Plaintiff request an extension of time for service. Merely communicating with Defendant City of Arcadia's counsel, without more, does not constitute good cause for not serving the other Defendants.


Even if good cause is not shown, a district court must consider any other circumstances that may warrant an extension of time and has discretion to extend time for service of process. See *Lepone-Dempsey* 476 F.3d at 1282; *Horenkamp v. Van Winkle And Co.*, 402 F.3d 1129, 1132 (11th Cir. 2005). Plaintiff indicates that dismissal will “deny him his opportunity to have his case heard against those defendants.” (Doc. 35). Yet, he provides no analysis or authority whether dismissal will bar Plaintiff’s action against the four Defendants. The Court sees no reason to extend time for service of process.

Accordingly, it is now

ORDERED:

Defendants Robert Allen, Martha Craven, Alice Frierson and Robert Hine are **DISMISSED**. The Clerk is DIRECTED to **TERMINATE** Defendants Robert Allen, Martha Craven, Alice Frierson and Robert Hine from the file.

DONE and **ORDERED** in Fort Myers, Florida this 1st day of March 2017.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record