

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

KENNETH THERRIEN,

Plaintiff,

v.

Case No: 5:16-cv-375-Oc-30PRL

EDUARDO BUSTAMANTE-MUNT,
SHERWIN SCOTT, ROBERT
CAMPBELL, WALTER RAY, JOHN
DOES 1-3 and SHERIFF OF MARION
COUNTY, FLORIDA,

Defendants.

ORDER

THIS CAUSE comes before the Court on Defendant Eduardo Bustamante-Munt's Motion to Dismiss Plaintiff's Complaint for Lack of Prosecution (Doc. 18), Plaintiff Kenneth Therrien's response in opposition (Doc. 20), Defendant Robert Campbell's Motion to Dismiss for Insufficient Service of Process and Lack of Personal Jurisdiction (Doc. 19), and Plaintiff's response in opposition (Doc. 21). In his responses, Plaintiff asks the Court to grant an extension for him to effect service on Bustamante-Munt and Campbell, which the Court construes as a motion for extension of time. Having considered the filings and the relevant law, the Court concludes Plaintiff should be allowed additional time to serve Defendants Bustamante-Munt and Campbell.

On June 3, 2016, Plaintiff filed this § 1983 action against Bustamante-Munt, Campbell, several other Marion County Sheriff's Office deputies, and the Marion County

Sheriff. (Doc. 1). The claims arise from an incident that occurred on June 5, 2012, and for which the statute of limitations was set to run on June 5, 2016. On July 11, 2016, the Sheriff and two deputies answered the complaint (Doc. 8), but neither Bustamante-Munt nor Campbell answered. Instead, Bustamante-Munt and Campbell made a limited appearance to move to dismiss the complaint without prejudice due to lack of service. However, such a remedy would effectively prevent Plaintiff from ever bringing the claim since the statute of limitations has now expired for him to do so.

In response, Plaintiff argues that he attempted to serve Bustamante-Munt and Campbell. Plaintiff's sent a process server to the Sheriff's Office, but the server was told neither Bustamante-Munt nor Campbell still worked there. The Sheriff's Office also refused to provide any information regarding their location. Plaintiff also asks for an extension of time to serve Bustamante-Munt and Campbell.


The Court concludes Plaintiff should be afforded a 60-day extension of time to serve Bustamante-Munt and Campbell. Federal Rule of Civil 4(m) allows the Court to extend the time for a plaintiff to serve a defendant for good cause. Here, Plaintiff has made efforts—however minimal—to effectuate service, and should be allowed additional time to serve Bustamante-Munt and Campbell. Plaintiff is authorized to use discovery to locate Bustamante-Munt and Campbell so service can be completed within 60 days.

Accordingly, it is ORDERED AND ADJUDGED that:

1. Defendants' motions to dismiss (Docs. 18 and 19) are DENIED.
2. Plaintiff's motions for extensions of time (Docs. 20 and 21) are GRANTED.

3. Defendant Bustamante-Munt's Motion for Leave to File a Reply (Doc. 22) is DENIED as moot.
4. Plaintiff shall have 60 days from the date of this Order to serve Defendants Eduardo Bustamante-Munt and Robert Campbell.

DONE and **ORDERED** in Tampa, Florida, this 27th day of October, 2016.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record