

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SUSAN GEPHART, as Personal
Representative of the Estate of
Thomas Cherry,

Plaintiff,

v.

Case No. 8:10-cv-830-T-33TBM

ROBERT C. WASHBURN, HERNANDO
COUNTY SHERIFF'S OFFICE AND ITS
MEMBERS, SERGEANT DONALD SMITH,
PAUL SMITH, and DUSTIN ADKINS,
individually, and in their
official capacity, SPRING HILL
FIRE & RESCUE DISTRICT VOLUNTEER
AND ITS MEMBERS, CAPTAIN JAMES
BILLOTTE, CHRIS BOZEK, STEVE
SMITH, WARREN FLATT, ROBERT
LEONDIKE, and ROBERT DELVECCHIO,
individually, and in their
official capacity,

Defendants.

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ORDER

This matter is before the Court pursuant to Defendant Sergeant Donald Smith's Motion to Dismiss Plaintiff's Complaint for Failure to Serve (Doc. # 20), filed on July 15, 2010. The Motion seeks dismissal of Plaintiff's complaint without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, as Plaintiff failed to effect service of process on Sergeant Smith and the time to do so under the Federal Rules of Civil Procedure has elapsed.

Plaintiff failed to file a timely response in opposition to the Motion, and accordingly, the Court considers the Motion as an unopposed motion.


Upon due consideration of the Motion and the record before the Court, the Court grants the Motion as unopposed.

Accordingly, it is

ORDERED, ADJUDGED, and DECREED:

- (1) Defendant Sergeant Donald Smith's Motion to Dismiss Plaintiff's Complaint for Failure to Serve (Doc. # 20) is **GRANTED**.
- (2) Plaintiff's claims against Defendant Sergeant Donald Smith are **DISMISSED WITHOUT PREJUDICE**.
- (3) This action shall remain pending against the remaining Defendant, Robert C. Washburn, only.

DONE and ORDERED in Chambers, in Tampa, Florida, this 5th day of August 2010.


VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Copies: All Counsel of Record