

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ALEXANDRA LOVE PROSPEROUS,

Plaintiff,

v.

Case No. 8:17-cv-996-T-33MAP

AGNES MCCABE, et al.,

Defendants.

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ORDER

This matter comes before the Court sua sponte. After filing her Second Amended Complaint, several returns of service were filed purporting to show service had been effected as to a host of Defendants. The Court takes this opportunity to address service of process and otherwise provide clarity in the record.

Discussion

Prosperous initiated this action against a number of Defendants on April 28, 2017. (Doc. # 1). The Clerk's Office issued summonses as to all Defendants named in the Complaint the same day. (Doc. ## 2-34). Before any returns of service were filed or any Defendant appeared, the Court sua sponte dismissed the Complaint and granted Prosperous leave to amend. (Doc. # 36). Thereafter, counsel for The Office of Ken

Burke, The St. Petersburg Police Department, the Honorable Sherwood Coleman, the Honorable Jack Hellinger, the Honorable James Pierce, the Honorable Kimberly Todd, and Agnes McCabe, each of whom were named as Defendants in the Complaint, filed notices of appearance. (Doc. ## 38-41).

Prosperous timely filed her Amended Complaint on May 16, 2017, and, on the same day, the Clerk's Office issued another round of summonses, this time as to all Defendants named in the Amended Complaint. (Doc. ## 44-77). Counsel for an additional three Defendants – Directions for Living, Jessica Long, and Rochelle Noel – filed a notice of appearance on May 18, 2017. (Doc. # 43). The Court dismissed the Amended Complaint sua sponte on May 22, 2017, but again granted Prosperous leave to amend. (Doc. # 78).

Prior to filing her Second Amended Complaint, Prosperous filed a construed Rule 4(c)(3) motion, seeking an order from the Court compelling the United States Marshal Service to act as her process server. (Doc. # 79). In her construed Rule 4(c)(3) motion, Prosperous stated she "paid the US marshals service for delivery of summons . . . and [was then] informed that [this Court] must grant permission to the US marshals service to continue to provide delivery service of summons."

(Id. at ¶ 3). The Court denied the construed Rule 4(c)(3) motion on May 25, 2017. (Doc. # 84).

The Second Amended Complaint, which, as of this Order, is the operative complaint, was filed on June 9, 2017. (Doc. # 85). The Second Amended Complaint lists

1. Agnes T. McCabe, Assistant State Attorney;
2. James Obeso, Attorney;
3. Christina L. Sandvoss, Lawyer;
4. Janet R. Schaffer, Lawyer;
5. The Office of Ken Burke, CPA Clerk of Courts;
6. The City of Saint Petersburg;
7. Healthy Start Coalition of Pinellas County;
8. Sally Smith, a pediatrician with Children's Medical Services;
9. Children's Medical Services Child Protection Teams;
10. Jame E. Lewis, PhD.;
11. Jessie Borzelleri, team coordinator at Children's Medical Services;
12. Kate Winkler, case manager at Children's Medical Services;
13. Bridget Herring Daniels, an employee at Children's Medical Services;
14. Rande Rae Reichard, a case manager at Directions for Living;
15. Directions for Living;
16. Rochelle Noel, case manager at Directions for Living;
17. Jessica Long, case manager at Directions for Living;
18. Eckerd Kids Community Alternatives;
19. Child Protection Investigation Division;
20. Cynthia Gibson, a Lieutenant at Child Protection Investigation Division;
21. Elaine L. Busher, "CIPD officer";
22. Lori Gray, "CIPD officer";
23. Cynthia Reed, "CIPD officer";
24. Kimali F. Ryan, "CIPD officer";
25. Elisabeth Thomas, "CIPD officer";
26. Sarah Pierce, supervisor with "CIPD";
27. Tracie Moore, supervisor with "CIPD";

28. Katie Favara, supervisor with "CIPD";
29. Jane Johnson, supervisor with "CIPD"; and
30. Kathleen "Katie" Kleypas, "CIPD officer"

as Defendants. (Doc. # 85). Each of those 30 Defendants are being sued in their individual and official capacities. (Id. at 4). Notably, the Second Amended Complaint no longer names Judges Todd, Hellinger, Pierce, or Coleman as Defendants. Compare (Id.), with (Doc. # 44).

Although returns of service were filed on June 15, 2017, for Judges Coleman, Todd, Hellinger, and Pierce (Doc. ## 87, 91, 94, 97), those Judges are no longer Defendants to this action as Prosperous did not name them in the Second Amended Complaint. A return of service was also filed showing that The St. Petersburg Police Department was served. (Doc. # 98). However, as with the Judges, The St. Petersburg Police Department was not named as a Defendant in the Second Amended Complaint.

Returns of service were also filed on June 15, 2017, showing McCabe, Noel, Long, and Directions for Living were served. (Doc. ## 88, 92, 93, 95). Counsel for McCabe, Noel, Long, and Directions for Living have already filed notices of appearance (Doc. ## 41, 43). Counsel for The Office of Ken Burke filed a notice of appearance previously as well. (Doc. # 38). Under Rule 15(a)(3), McCabe, Noel, Long, Directions

for Living, and The Office of Ken Burke have until June 23, 2017, to file a response to the Second Amended Complaint. Notably, The Office of Ken Burke and McCabe each moved to dismiss the Second Amended Complaint on June 21, 2017. (Doc. ## 99, 100).

Discounting the previous nine returns of service, only the returns for Healthy Start Coalition of Pinellas, Janet Schaffer, Rande Rae Reichard, and Eckerd Kids Community Alternatives (Doc. ## 86, 89, 90, 96) remain outstanding. Of those, the returns of service for Schaffer and Reichard show that service was not actually effected. (Doc. ## 89, 90). And, with respect to Healthy Start Coalition and Eckerd Kids Community Alternatives, a search of Florida's Department of State's online records shows they are Florida not-for-profit corporations.

Federal Rule of Civil Procedure 4(h) and section 48.081, Fla. Stat., provide for how service of process is completed on a corporation. Healthy Start Coalition's finance manager accepted service and Eckerd Kids Community Alternatives' executive director accepted service. (Doc. ## 86, 96). A corporation may be served by delivering a copy of the summons and of the complaint to an officer or a managing agent, Fed. R. Civ. P. 4(h)(1)(B), or by serving any director, Fla. Stat.

§ 48.081(1)(c). While Healthy Start Coalition and Eckerd Kids Community Alternatives have been served, they have until June 23, 2017, to file a response to the Second Amended Complaint under Rule 15(a)(3), absent which the Court expects Prosperous to promptly apply for entry of Clerk's Default.

Except for Directions for Living, Long, Noel, McCabe, Healthy Start Coalition, Eckerd Kids Community Alternatives, and The Office of Ken Burke, there is no evidence in the record that the other Defendants named in the Second Amended Complaint have been served. The Court notes, however, that Prosperous still has until July 27, 2017, to serve those Defendants and file proof thereof. The Court highly recommends, but does not require, that Prosperous utilize the services of the Legal Information Program offered by the Federal Bar Association, which runs every Tuesday from 11:00AM to 12:30PM at the Sam M. Gibbons United States Courthouse, 801 N. Florida Avenue, Tampa, FL 33602. Appointments can be made by calling 813-301-5400.

Accordingly, it is

ORDERED, ADJUDGED, and DECREED:

Prosperous shall comply with the requirements of Federal Rule of Civil Procedure 4 by July 27, 2017. Failure to timely

serve and file proof thereof by July 27, 2017, may result in dismissal of the action against any non-served Defendant.

DONE and **ORDERED** in Chambers in Tampa, Florida, this 22nd day of June, 2017.

