

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-61712-CIV-COHN

DIDAL L. STUBBS and MORRIS L. BENBOW,

Magistrate Judge Seltzer

Plaintiffs,

vs.

KEITH B. BUSH and RRR TRANSPORTATION
COMPANY,Defendants.

**ORDER GRANTING MOTION TO DISMISS FOR INSUFFICIENT SERVICE
ORDER TO SHOW CAUSE TO PLAINTIFFS REGARDING SUGGESTION OF DEATH**

_____ **THIS CAUSE** is before the Court upon Defendant Keith Bush's Motion to Dismiss for Insufficient Process and/or Insufficient Service of Process [DE 6] and Suggestion of Death [DE 5]. The Court has carefully considered the motion and attached affidavits and is otherwise fully advised in the premises. Plaintiff has not responded to the motion or the suggestion of death. The response deadline was December 4, 2009.

I. MOTION TO DISMISS

In this negligence action against Keith Bush and the trucking company that he worked for, Defendant Bush asserts that the process server who came to the house in which he resided with his girlfriend did not leave a copy of the summons and complaint. Rather, the process server only left a copy of the interrogatories and request to produce. Affidavit of Janet Gomez [DE 6-1].

Defendant Bush has made a sufficient prima facie case that service was not completed in this diversity action pursuant to Fla. Stat. § 48.031(1)(a). Plaintiff has

failed to respond. The Court will therefore grant the motion to dismiss, without prejudice, for insufficient service of process as to Defendant Keith Bush.¹

II. SUGGESTION OF DEATH

Defendant has also made a sufficient prima facie case that Plaintiff Morris Benbow is now deceased. Pursuant to Rule 17(a)(3), the Court hereby places Plaintiffs on notice that they must take action (such as to substitute the real party in interest) to respond to the suggestion of death of Plaintiff Morris Benbow by January 22, 2010. Failure to respond may result in the dismissal of Plaintiff Morris Benbow.

III. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant Keith Bush's Motion to Dismiss for Insufficient Process and/or Insufficient Service of Process [DE 6] is hereby **GRANTED**;
2. Counts I and III of the Complaint are hereby **DISMISSED, without prejudice**, for insufficient service of process as to Defendant Keith Bush.
3. Plaintiffs shall respond to the Suggestion of Death, including taking any action necessary to comply with Rule 17(a), by January 22, 2010.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County,

Florida, this 30th day of December, 2009.


JAMES I. COHN
United States District Judge

Copies furnished to:
counsel of record on CM/ECF

¹ There is no dispute that Defendant RRR Transportation was served. Defendant RRR has filed an Answer to the Complaint [DE 7].