

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-60714-CIV-COHN/ROSENBAUM

MENTORA EUBANKS and
ARTHUR N. HENSON, II, D.O.,

Plaintiffs,

v.

CAROL FREBURGER, JOHN
BOALS, ANDREA ANIDO, and
CHARLES J. CRIST, JR.,Defendants.

ORDER DISMISSING WITHOUT PREJUDICE
DEFENDANT ANDREA ANIDO PURSUANT TO RULE 4(m)

THIS CAUSE is before the Court *sua sponte*. The Court has reviewed the record in this case and is otherwise advised in the premises.

Pursuant to Federal Rule of Civil Procedure 4, “[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). However, “if the plaintiff shows good cause . . . , the Court must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m).

Plaintiffs Mentora Eubanks and Arthur N. Henson, II, D.O. filed this action on April 4, 2011 [DE 1], so their 120-day service deadline expired on August 2, 2011. However, when Plaintiffs showed good cause for an extension of time due to the difficulty they experienced in locating Defendants, the Court granted them an extension of time through August 23, 2011. See Order Granting in Part Rule 4(m) Motion to Extend Time for Service of Process [DE 12]. Thereafter, Plaintiffs served Defendant John Boals, but they continued to experience difficulty in serving the remaining Defendants. The Court once again found good cause for an extension of time and

ordered, "Plaintiffs shall perfect service of process on Defendants, and file proof of same with the Court, on or before **September 22, 2011**. **Failure to do so will result in the dismissal without prejudice of any Defendants who have not been served.**"


Order Granting in Part Second Rule 4(m) Motion to Extend Time for Service of Process [DE 15] ("August 22nd Order") at 3.

On September 19, 2011, Plaintiffs filed their Notice of Filing Proof of Service [DE 20] as to Defendants John Boals, Charles J. Crist, Jr., and Carol Freburger, but stated, "The remaining Defendant, ANDREA ANIDO continues to conceal her whereabouts." The following day, Plaintiffs wrote in their Rule 4(2) Motion to Assess Service of Process Fees, Attorney Fees and Sanctions [DE 22], "Plaintiffs have still not been able to locate Defendant, Andrea Anido."

To date, Plaintiffs have not filed proof of service of process on Defendant Andrea Anido, and the time for doing so has passed. See Fed. R. Civ. P. 4(m); Aug. 22nd Order at 3. Plaintiffs have not requested or otherwise shown good cause for any additional extensions of time. Consequently, the Court must dismiss Defendant Andrea Anido without prejudice. See Fed. R. Civ. P. 4(m) ("[i]f a defendant is not served within 120 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant . . ."). Accordingly, it is

ORDERED AND ADJUDGED that pursuant to Federal Rule of Civil Procedure 4(m), Defendant Andrea Anido is hereby **DISMISSED without prejudice** from the above-captioned action.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 27th day of September, 2011.


JAMES I. COHN
United States District Judge

Copies provided to:
Counsel of Record via CM/ECF
Pro se parties via regular mail