

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

<b>BENJAMIN MCIVER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 5:12-CV-156 (MTT)</b>
	)	
<b>CARL HUMPHREY, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**ORDER**

Before the Court is the Recommendation of Magistrate Judge Charles H. Weigle. (Doc. 37). The Magistrate Judge recommends granting Defendant Humphrey’s Motion for Final Judgment (Doc. 33) pursuant to Fed. R. Civ. P. 54(b) and dismissing Defendant Officer William Johns for failure to effect timely service pursuant to Fed. R. Civ. P. 4(m). The Plaintiff has not filed an objection to the Recommendation.

As to Humphrey’s Motion for Final Judgment, the Magistrate Judge’s Recommendation is Adopted and made the Order of the Court. This Court dismissed all claims against Humphrey by a January 31, 2013, Order (Doc. 31) that effectively was both “final” and a “judgment.” See *Lloyd Noland Foundation, Inc. v. Tenet Health Care Corp.*, 483 F.3d 773, 777 (11th Cir. 2007). Further, the Court finds no “just reason for delay” in certifying that Order as a final judgment. *Id.*

The Magistrate Judge’s Recommendation that Officer Johns be dismissed for failure to effect timely service is also Adopted and made the Order of the Court. The Court further emphasizes that its dismissal for failure to serve is not based on any fault

of the Plaintiff. Rather, it is based on the fact that the Court has made reasonable efforts<sup>1</sup> on the Plaintiff's behalf to serve Officer Johns and has been unsuccessful. There is nothing more the Court can reasonably do to effectuate service. See *Richardson v. Johnson*, 598 F.3d 734, 740 (11th Cir. 2010) (noting that a good cause extension of time is available to unrepresented prison litigants "*as long as the court-appointed agent can locate the prison-guard defendant with reasonable effort*")(emphasis added).

Accordingly, Humphrey's Motion for Final Judgment (Doc. 33) is **GRANTED**, and Officer Johns is **dismissed without prejudice** for failure to effect timely service.

**SO ORDERED**, this 10th day of June, 2013.

S/ Marc T. Treadwell  
MARC T. TREADWELL, JUDGE  
UNITED STATES DISTRICT COURT

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<sup>1</sup> This includes an attempt by the U.S. Marshals to personally serve Officer Johns at his last known home address, where the occupant stated she did not know Johns, had lived there for more than a year, and had not received any mail for Johns in that time. (Doc. 36).