

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CARLOS E. GONZALEZ,
Plaintiff,

v.

1:15-cv-2077-WSD-JKL

**CENTURION MEDICAL
PRODUCTS, a/k/a CENTURION
MEDICAL CORPORATION,**
Defendant.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge John K. Larkins III's Final Report and Recommendation [6] ("R&R"). The R&R recommends dismissal of this action without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure ("Rule 4(m)").

I. BACKGROUND

On June 10, 2015, Plaintiff Carlos E. Gonzalez ("Plaintiff"), proceeding *pro se*, filed his Complaint. ([1]). In it, Plaintiff alleges violations of 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. He also asserts various state law tort claims.

On June 10, 2015, the Clerk issued to Plaintiff a summons for service on

Defendant Centurion Medical Products, a/k/a Centurion Medical Corporation (“Defendant”). ([2]). On June 15, 2015, Plaintiff returned the summons unexecuted, explaining that Defendant’s attorney had refused to accept service. ([3]).

On January 15, 2016, Magistrate Judge Gerrilyn G. Brill found that Plaintiff had not served process on Defendant. ([4]). Magistrate Judge Brill ordered Plaintiff, within ten (10) days, to show cause why this case should not be dismissed pursuant to Rule 4(m) for lack of service or pursuant to Local Rule 41.3(A)(3), NDGa for want of prosecution. (Id.). Plaintiff did not respond within the ten (10) day period.

On January 19, 2016, this action was reassigned to Magistrate Judge John K. Larkins III.

On February 5, 2016, Magistrate Judge Larkins issued his R&R. The R&R recommends dismissal of this action without prejudice pursuant to Rule 4(m) because Plaintiff failed to timely serve process on Defendant.

II. DISCUSSION

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate

judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). With respect to those findings and recommendations to which objections have not been asserted, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984). Plaintiff did not object to the R&R, and the Court thus reviews it for plain error.

B. Analysis

When Plaintiff filed his Complaint in June 2015, Rule 4(m) provided:

If 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. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m) (Dec. 1, 2014) (amended Dec. 1, 2015).¹

More than ten (10) months have passed since Plaintiff filed his Complaint.

¹ On December 1, 2015, Rule 4(m) was amended to allow a plaintiff 90 days, rather than 120 days, to serve the defendant.

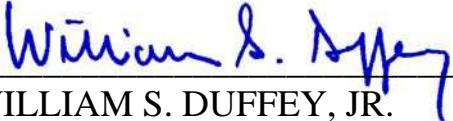
Approximately three (3) months have passed since Magistrate Judge Brill ordered Plaintiff to show cause why this case should not be dismissed. Plaintiff still has not completed service of process or shown good cause for his failure. The R&R recommends dismissal of this action without prejudice pursuant to Rule 4(m) because Plaintiff failed to timely serve process on Defendant. The Court finds no plain error in this finding and recommendation. See Slay, 714 F.2d at 1095. Accordingly, this action is dismissed without prejudice.

III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge John K. Larkins III's Final Report and Recommendation [6] is **ADOPTED**, and this action is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED this 18th day of April, 2016.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE