

**In the United States District Court
for the Southern District of Georgia
Waycross Division**

 FILED
Scott L. Poff, Clerk
United States District Court

By casbell at 8:32 am, Apr 11, 2017

DENNIS RAY GRANTHAM,

Plaintiff,

v.

No. 5:16-CV-61

UNITED STATES OF AMERICA &
DEPARTMENT OF VETERANS
AFFAIRS,

Defendants.

ORDER

Before the Court are Plaintiff Dennis Ray Grantham's ("Plaintiff") Objections (Dkt. No. 24) to the Magistrate Judge's Report and Recommendation ("R & R") (Dkt. No. 23). For the reasons stated below, Plaintiff's Objections are **OVERRULED** and the Court **ADOPTS** the R & R as applied to Defendant the United States of America and Defendant Department of Veterans Affairs.

FACTUAL BACKGROUND

Plaintiff filed his initial Complaint on July 25, 2016. Dkt. No. 1. Plaintiff then amended his Complaint in August 2016, naming three Defendants: the United States of America, the Department of Veterans Affairs, and the

Department of Veterans Affairs Clinic Nurse Manager and Dr. Christian Jimmerson. Dkt. No. 4. The basis of Plaintiff's Complaint is that he received insufficient care at the Department of Veterans Affairs. Dkt. No. 4.

DISCUSSION

While not specifically stated, it appears Plaintiff bases his claim on the Federal Tort Claims Act. See 28 U.S.C. § 2679(b)(1). As to Defendant Department of Veterans Affairs, Plaintiff has requested voluntary dismissal. Dkt. No. 14. Neither Defendant has objected to dismissal without prejudice. As such, all claims against the Department of Veterans Affairs will be **DISMISSED WITHOUT PREJUDICE.**

Plaintiff's letter, however, did not clearly request a voluntary dismissal as to the Veterans Affairs Clinic Nurse Manager and Dr. Christian Jimmerson. Dkt. No. 14. As such, the Court declines to grant voluntary dismissal as to those parties. In addition, it is unclear if these parties have made an appearance in this action or if Plaintiff seeks to continue his claims against these individual defendants. Accordingly, the Court requests that the parties clarify the status of the Veterans Affairs Clinic Nurse Manager and Dr. Christian Jimmerson.

As for the United States of America, the claims against it must be dismissed. A plaintiff serving the United States of America or its agencies must deliver a copy of the summons and the complaint to both the United States Attorney for the district in which the action is brought and the Attorney General of the United States. Fed. R. Civ. P. 4(i)(1)(A). Here, there is no dispute that no summons was sent to the United States Attorney for the Southern District of Georgia and no documentation at all was sent to the Attorney General of the United States' Office.

However, under Federal Rule of Civil Procedure 4(m), even "[i]f the plaintiff fails to properly serve the defendant," the court may "direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period." Lepone-Dempsey v. Carroll Cty. Comm'rs, 476 F.3d 1277, 1281 (11th Cir. 2007) (citing Fed. R. Civ. P. 4(m)). "Good cause exists 'only when some outside factor[,] such as reliance on faulty advice, rather than inadvertence or negligence, prevented service.'" Id. (citing Prisco v. Frank, 929 F.2d 603, 604 (11th Cir. 1991) (alteration in original)). Here, Plaintiff cites nothing more than his pro-se status

to excuse his failure to properly serve the United States of America. This is insufficient to survive dismissal. However, the Court grants dismissal without prejudice because it bases its decision on a failure of service rather than substantive grounds and Plaintiff's action is not yet barred by the statute of limitations. As such, Plaintiff is free to refile this action and effect proper service of process on the United States of America.

CONCLUSION

For the reasons above, the Plaintiff's Objections are **OVERRULED** (Dkt. No. 24) and the Magistrate Judge's R & R (Dkt. No. 23) is **ADOPTED** as applied to Defendant Veterans Affairs and Defendant the United States of America. Plaintiff's request to voluntarily dismiss his claims against the Department of Veterans Affairs (Dkt. No. 14) will be **GRANTED**. Therefore, the Department of Veterans Affairs' Motion to Dismiss (Dkt. No. 16) is **DENIED AS MOOT**, the United States of America's Motion to Dismiss (Dkt. No. 18) is **GRANTED** and Plaintiff's claims against the United States of America will be **DISMISSED WITHOUT PREJUDICE**. The Court requests that the parties clarify the status of the Veterans Affairs Clinic Nurse Manager and Dr. Christian Jimmerson within 10 days of the issuance of this Order.

SO ORDERED, this 11th day of March, 2017.



LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA