

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

DARRELL MINGO, Beneficiary of)
FLOYD MINGO, deceased,)
)
)
 Plaintiff,)
)
 v.)
)
 AMERICAN GENERAL ASSURANCE)
 COMPANY,)
)
 Defendant.)
 _____)

Case No. CV-08-380-S-BLW

ORDER

The Court has before it Defendant’s Motion to Dismiss with Prejudice (Docket No. 16). On February 11, 2009, the Court granted Plaintiff’s counsel’s Motion to Withdraw. In that Order, the Court ordered that the Plaintiff be allowed twenty-one (21) days after the filing of proof of service by Withdrawing Counsel to advise the Court in writing in what manner the Plaintiff would be represented in this matter. The Court further ordered that, if the Plaintiff failed to appear in the action, either in person or through a newly appointed attorney within such twenty-one (21) day period, such failure would be sufficient grounds for the dismissal of the action of the Plaintiff with prejudice and without further notice.

Withdrawing Counsel served the Order on Plaintiff. As explained in the process server's affidavit, the process server served Plaintiff's wife at their residence on February 24, 2009. (Docket No. 15). This is sufficient service pursuant to Federal Rule of Civil Procedure 5(b)(2)(ii). Withdrawing Counsel filed proof of that service with the Court on March 12, 2009. The twenty-one (21)-day time period has now passed for Plaintiff to enter an appearance. Therefore, the Court will grant Defendant's motion and dismiss the case in its entirety.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Defendant's Motion to Dismiss with Prejudice (Docket No. 16) shall be, and the same is hereby, GRANTED.

The Court will enter a separate Judgment as required by Federal Rule of Civil Procedure 58.

DATED: **May 14, 2009**



B. Lynn Winmill

B. LYNN WINMILL

Chief Judge

United States District Court