

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

JENNAH M. GASKINS,

Plaintiff,

v.

TIMOTHY F. ROSS, *et al.*,

Defendants.

CAUSE NO.: 2:20-CV-328-TLS-JEM

OPINION AND ORDER

This matter is before the Court on the Plaintiff's Objection to Report and Recommendation of Magistrate Judge [ECF No. 26], filed on January 18, 2021, in response to the Report and Recommendation of United States Magistrate Judge Pursuant to 28 U.S.C. § 636(b)(3) and Local Rule 72-1 [ECF No. 20], filed on January 6, 2021.

ANALYSIS

The Plaintiff filed her Complaint [ECF No. 1] against four Defendants, including Defendant OC Transportation, Inc., on September 11, 2020. As such, the Plaintiff needed to serve the Defendants by December 10, 2020. *See* Fed. R. Civ. P. 4(m). On November 9, 2020, the Court ordered the Plaintiff to file a status report as to service of process on Defendant OC Transportation, Inc. [ECF No. 15]. On November 16, 2020, in a status report, the Plaintiff indicated service was not yet complete [ECF No. 16]. On December 22, 2020, the Plaintiff was ordered to file proof of service of the Complaint on or before January 5, 2021, and warned that, if she did not, the claims against the Defendant might be dismissed [ECF No. 18]. By January 5th, however, the Plaintiff had filed neither the proof of service nor a request for further extension. Therefore, on January 6, 2021, Judge Martin issued his Report [ECF No. 20]

recommending that the Court dismiss the claims against Defendant OC Transportation, Inc., without prejudice.

The Court's review of a Magistrate Judge's Report and Recommendation is governed by 28 U.S.C. § 636(b)(1), which provides as follows:

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(2) ("Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations.").

The Plaintiff filed her Objection to the Report [ECF No. 26] within 14 days. The Objection details that: (1) Defendant OC Transportation, Inc. has now been served, and proof of the same has been filed [ECF No. 21]; (2) the statute of limitations for the cause of action against the Defendant has not run, and so the Defendant will not be prejudiced by a further, retroactive extension of time within which to serve it; (3) judicial economy would be preserved by not dismissing the Defendant from this action because the Plaintiff would need to re-file suit and seek consolidation of a new action; and (4) failure to request a further extension was merely an oversight.

Upon de novo review, to which the Plaintiff is entitled, the Court finds the Plaintiff's arguments well-taken and will not dismiss the claims against the Defendant. The Court notes that the Defendant has already filed an Answer in response to the Plaintiff's Complaint [ECF No. 24]. However, the Court cautions the Plaintiff that an extension is necessary for the Court's

conclusion, as otherwise service would not have been perfected, and grants the Plaintiff's request to correct her oversight.

CONCLUSION

For the reasons set forth above, the Court GRANTS the Plaintiff's request that the time to complete service be extended nunc pro tunc until January 14, 2021 and MODIFIES the Report and Recommendation of the United States Magistrate Judge [ECF No. 20].

SO ORDERED on February 1, 2021.

s/ Theresa L. Springmann _____
JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT