

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KELVIN FRANCIS

CIVIL ACTION

VERSUS

NO. 10-2498

OFFICER ANTHONY DUPREE, ET AL.

SECTION "A" (4)

O R D E R

The Court, having considered the record, the applicable law, the Report and Recommendation of the United States Magistrate Judge, and the objection to the Magistrate Judge's Report and Recommendation, hereby approves in part the Report and Recommendation of the United States Magistrate Judge and adopts it as its opinion in this matter as to the disposition of the Rule 12(b)(6) challenge.

As to the Rule 12(b)(5) challenge, the magistrate judge correctly found that Plaintiff did not serve defendant Dupree within 120 days after IFP status was granted. In fact, as explained by the magistrate judge, Dupree was never served in accordance with the Federal Rules. Plaintiff's suggestion that his IFP status somehow forgives application of the rules of service is incorrect and Lindsey v. United States Railroad Retirement Board, 101 F.3d 444 (5th Cir. 1996), cited by Plaintiff, does not stand for that proposition.

The Court does recognize, however, that Plaintiff is incarcerated. Therefore, Plaintiff had to rely on the United State Marshal to effect service and Plaintiff's limited resources prevented him from obtaining a home address for defendant Dupree.

Under the circumstances the Court is persuaded that it should exercise its discretion under Rule 4(m) to extend the time for service for an appropriate period so that Plaintiff can properly serve Officer Dupree.

Accordingly, and for the foregoing reasons;

It is **ORDERED** that the **MOTION TO DISMISS PURSUANT TO RULES 12(B)(6) AND 12(B)(5) (R. Doc. 15)** is **DENIED** and the **Objection (Rec. Doc. 21)** is **GRANTED**. The time for Plaintiff to effect service on Officer Dupree is extended to **October 28, 2011**;

IT IS FURTHER ORDERED that the Clerk of Court issue summons and cause service of the summons and complaint, upon defendant Anthony Dupree, through the U.S. Marshal's Service in accordance with 28 U.S.C. § 1915(d) and Federal Rule of Civil Procedure 4(c)(3).

August 25, 2011



UNITED STATES DISTRICT JUDGE

NEF: United States Magistrate Judge
United States Marshal