

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

HEATH A. MATHERNE

CIVIL ACTION

VERSUS

NO: 18-3396

**STATE OF LOUISIANA, THROUGH
THE DEPARTMENT OF CHILDREN
AND FAMILY SERVICES, GENECIA
HILL, AND LAFOURCHE PARISH
SCHOOL BOARD**

SECTION: T (3)

ORDER

Before the Court is a Motion to Dismiss for Insufficient Service¹ filed by Defendant State of Louisiana through the Department of Children and Family Services (“DCFS”). For the following reasons, the Motion to Dismiss for Insufficient Service² is **GRANTED**.

FACTUAL AND PROCEDURAL BACKGROUND

This matter arises out of Plaintiff’s claim for monetary damages under 42 U.S.C. § 1983 against the State of Louisiana through the Department of Children and Family Services (“DCFS”). Plaintiff alleges DCFS violated his constitutional rights by taking Plaintiff’s minor daughter from school due to allegations of child abuse without first notifying Plaintiff.³ DCFS moves to dismiss Plaintiff’s complaint for insufficient service on DCFS.

LAW AND ANALYSIS

Federal Rule of Civil Procedure 12(b)(5) permits a defendant to move to dismiss a complaint for improper service of process. “A Rule 12(b)(5) motion is the proper vehicle for challenging the mode of delivery or the lack of delivery of the summons and complaint.”⁴ Federal

¹ R. Doc. 22.

² R. Doc. 22.

³ R. Doc. 1-2.

⁴ 5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 1353 (3d ed.).

Rules of Civil Procedure Rule 4(j)(2) provides that a state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by: “(A) delivering a copy of the summons and of the complaint to its chief executive officer; or (B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.” La. R.S. § 13:5107(A)(1) governs service on a state agency, and provides:

In all suits filed against the state of Louisiana or a state agency, citation and service may be obtained by citation and service on the attorney general of Louisiana, or on any employee in his office above the age of sixteen years, or any other proper officer or person, depending upon the identity of the named defendant and in accordance with the laws of this state, and on the department, board, commission, or agency head or person, depending upon the identity of the named defendant and in accordance with the laws of this state, and on the department, board, commission, or agency head or person, depending upon the identity of the named defendant and the identity of the named board, commission, department, agency, or officer through which or through whom suit is to be filed against.

In this case, Plaintiff requested and effected service on James LeBlanc, the Secretary of the Department of Public Safety and Corrections (“DPSC”).⁵ LeBlanc is the head of DPSC, not the chief executive officer of DCFS.⁶ Therefore, Plaintiff’s service was insufficient under Federal Rule 4(j)(2)(A). Additionally, Plaintiff has not properly served any proper person pursuant to La. R.S. § 13:5107. Thus, Plaintiff has failed to prove service of process upon Defendant State of Louisiana through the Department of Children and Family Services.

CONCLUSION

Accordingly, for the foregoing reasons, **IT IS ORDERED** that Motion to Dismiss for Insufficient Service⁷ is **GRANTED**. Heath A. Matherne’s claims against Defendant State of


⁵ R. Doc. 1-2, p.5.

⁶ R. Doc. 22-1, p.2.

⁷ R. Doc. 22.

Louisiana through the Department of Children and Family Services are **DISMISSED WITH PREJUDICE.**

New Orleans, Louisiana, on this 30th day of January, 2020.


GREG GERARD GUIDRY
UNITED STATES DISTRICT JUDGE