

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number 08-13909-BC
Honorable Thomas L. Ludington

DIANE M. SMITH, *aka*, DIANE
KACZMAREK

Defendant.

**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S AMENDED
MOTION FOR ALTERNATE SERVICE**

On November 9, 2008, Plaintiff filed an ex parte motion “showing good cause to allow permission to serve by alternate means” [Dkt. # 3], which the Court denied as moot, because Plaintiff had not alleged that service of process by registered or certified mail was not possible. Now before the Court is Plaintiff’s amended motion for alternate service [Dkt. # 5]. For the reasons stated below, the amended motion will be denied without prejudice.

Prior to filing a complaint, on or about August 7, 2008, Plaintiff submitted a request to the Bay City Postmaster for information regarding the status of Defendant Diane Smith’s last known address. On or about August 12, 2008, the Postmaster confirmed that Defendant did not have a change of address on file, and that Defendant received mail at the address that Plaintiff provided.

On September 11, 2008, Plaintiff filed a complaint. As stated in the amended motion, on or about September 12, 13, and 19, 2008, Plaintiff attempted to serve Defendant with the summons and complaint by certified mail, which was returned to Plaintiff as unclaimed. At various times on October 14, 21, 24, and 25, 2008, Plaintiff, through a process server, attempted to personally serve

Defendant at her last known address. The attempts were unsuccessful, and Plaintiff now seeks an order from the Court, permitting it to serve Defendant by substituted means. Plaintiff seeks to serve Defendant by (1) posting a copy of the summons and complaint at Defendant's residence, (2) sending a copy of the summons and complaint by certified mail to Defendant's residence, and (3) mailing a copy of the summons and complaint via first class mail to Defendant's residence.

Under Federal Rule of Civil Procedure 4(e)(1), Plaintiff may serve Defendant by any means allowed under Michigan law. Michigan law allows service of process on an individual defendant personally or by "sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee." Mich. Ct. R. 2.501(A)(2). Plaintiff has shown that "service of process cannot reasonably be made as provided by [the] rule." *Id.* 2.105(I)(1). Thus, "the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard." *Id.*

However, a request for such an order must be made "in a verified motion dated not more than fourteen days before it is filed." *Id.* 2.105(I)(2). Plaintiff has not filed a verified motion. Moreover, the Court is not satisfied that the substituted means are "reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard," *id.* 2.105(I)(1), when Defendant's address has not been verified since August 12, 2008. Upon the filing of a verified motion with a current confirmation of Defendant's address, the Court would be willing to allow service by substituted means.

Accordingly, it is **ORDERED** that Plaintiff's amended motion for alternate service [Dkt # 5] is **DENIED WITHOUT PREJUDICE**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: December 16, 2008

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 16, 2008.

s/Tracy A. Jacobs
TRACY A. JACOBS