

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THOMAS M. BEAUDOIN,

Plaintiff,

v.

Case No. 08-CV-14289-DT

DONALD McGEHEE, et al.,

Defendants.

**ORDER DISMISSING DEFENDANTS DONALD MCGEHEE, LOUIS ALOSSO,
KEVIN SHEEN, AND "SCHLECTER" FOR FAILURE TO EFFECT SERVICE
AND LACK OF PROSECUTION**

On October 8, 2008, Plaintiff Thomas M. Beaudoin filed his complaint against multiple Defendants. On April 3, 2009, the court ordered Plaintiff to show cause why Defendants Donald McGehee, Louis Alosso, Kevin Sheen, and "Schlecter" should not be dismissed for lack of prosecution and failure to effect service. Plaintiff timely responded, agreeing to dismiss Defendants Alosso, Sheen and Schlecter. With respect to Defendant McGehee, Plaintiff states that the sheriff has had "a very difficult time serving the defendants that work for the racing commission." (4/15/09 Resp. at 1.) The court finds that Plaintiff's response is insufficient to justify his failure to effect service on Defendant McGehee.

Federal Rule of Civil Procedure 4(m) provides that if service is not effectuated within 120 days, the court shall dismiss the action without prejudice as to that defendant. Further, Eastern District of Michigan Local Rule 41.2 provides that if the parties have not taken action within a reasonable time, the court may enter an order dismissing the case for lack of prosecution. Here, Plaintiff has not shown "good cause"

for his failure to effect service on Defendants, Fed. R. Civ. P. 4(m), or for his failure to prosecute this case, E.D. Mich. LR 41.2. Plaintiff does not specify how many times service was attempted, nor why he did not move earlier for court approval of service by alternate means. Indeed, Plaintiff did not update the court regarding any of these Defendants until the court issued its April 3, 2009 “Order to Show Cause.” “Absent a showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal.” *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996) (citing *Habib v. Gen. Motors Corp.*, 15 F.3d 72, 73 (6th Cir. 1994)). It is Plaintiff’s burden to establish good cause for failing to timely effect service. *Habib*, 15 F.3d at 73. Inasmuch as Plaintiff has failed to meet his burden or otherwise satisfactorily respond to the court’s “Order to Show Cause,”

IT IS ORDERED that Defendants Donald McGehee, Louis Alosso, Kevin Sheen, and “Schlecter” are dismissed without prejudice for lack of service and failure to prosecute. Fed. R. Civ. P. 4(m); E.D. Mich. LR 41.2.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 4, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 4, 2009, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522