

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

TIMOTHY L. STEVENS

PLAINTIFF

VS.

CIVIL ACTION NO. 5:13-cv-116(DCB)(MTP)

CITY OF VIDALIA, BY AND THROUGH
ITS AGENT FOR SERVICE OF PROCESS,
ITS MAYOR, HON. HIRAM COPELAND; AND
CHARLIE C. ROGERS, INDIVIDUALLY

DEFENDANTS

ORDER OF DISMISSAL

This cause is before the Court on defendants City of Vidalia and Charlie C. Rogers' Motion to Dismiss for Failure to Comply with Court's Order of June 26, 2014, or alternatively Renewed Motion to Dismiss for Insufficient Service of Process (**docket entry 16**). Having carefully considered the motion, to which no response has been filed, and being fully advised in the premises, the Court finds as follows:

On July 2, 2013, the plaintiff Timothy L. Stevens filed suit in Adams County Circuit Court against the City of Vidalia, Louisiana, and Charlie C. Rogers for injuries the plaintiff claims he sustained in a July 2, 2010, car accident in Natchez, Mississippi. After more than one year following the filing of his suit, the plaintiff has yet to serve process on the defendants; nor, despite invitation by the Court, has the plaintiff shown good cause for his failure to do so.

By Order of March 17, 2014, the Court allowed the plaintiff fourteen (14) days from the date of entry of the Order to serve

process. The plaintiff did not do so, nor did he offer any explanation for his failure to serve process. Again, by Order of June 26, 2014, the Court allowed the plaintiff thirty (30) days from the date of entry of the Order to serve the defendants or explain how he is prevented from doing so. In addition, the Court ordered plaintiff's counsel to file a response within thirty (30) days informing the Court whether the delay in service was attributable to the plaintiff's attorney or to the plaintiff himself; and, if he was no longer representing the plaintiff, to notify the Court within the same time period, as well as notify his client. The plaintiff was warned that a failure to comply with the Order could result in dismissal of his action. No response by the plaintiff or his counsel has been received.

The Court finds that no further extensions can be afforded the non-responsive plaintiff, and that his action must be dismissed. The defendants urge dismissal with prejudice, but the Court finds that the dismissal should be without prejudice pursuant to Federal Rule of Civil Procedure 4(m). See Ayika v. Sutton, 378 Fed.Appx. 432, 434 (5th Cir. 2010). The Court also warns the plaintiff, however, that although the dismissal is without prejudice, it may operate as a dismissal "with prejudice" where the statute of limitations has run. See Sanchez v. Perez, 96 F.3d 1445, 1996 WL 512289, *2 (5th Cir. 1996)(citing Norlock v. City of Garland, 768 F.2d 654, 658 (5th Cir. 1985).

Accordingly,

IT IS HEREBY ORDERED that defendants City of Vidalia and Charlie C. Rogers' Motion to Dismiss (**docket entry 16**) is GRANTED;

FURTHER ORDERED that this action shall be dismissed without prejudice, and a Final Judgment shall issue this day.

SO ORDERED, this the 27th day of October, 2014.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE