

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KERRY KOTLER,

Plaintiff,

-against-

C. BOLEY, CORRECTION OFFICER; J.
CARRERAS, SERGEANT; K. CHAUVIN,
SENIOR COUNSELOR; AND S. REAMS,
INMATE GRIEVANCE PROGRAM
SUPERVISOR,

Defendants.

17-CV-239 (KMK)

ORDER OF SERVICE

KENNETH M. KARAS, United States District Judge:

Plaintiff, currently incarcerated in the New York Central Psychiatric Center, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights. By order dated April 28, 2017, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, in forma pauperis (IFP).¹ On May 4, 2017, the Court issued an Order of Service directing the U.S. Marshals Service (the "Marshals") to complete service on the then-named Defendants, including Defendant K. Chauvin ("Chauvin"). (Dkt. No. 7.) Service as to the other Defendants was executed on July 10, 2017 and July 17, 2017, (Dkt. Nos. 11, 12, 13), but Chauvin remained unserved, (Dkt. No. 18.) On September 28, 2018, the Court granted the other named Defendants' Motion To Dismiss and instructed the Attorney General for the State of New York to provide Chauvin's address. (Dkt. No. 29.) In a letter dated October 2, 2018, the Attorney General responded with Chauvin's last known address. (Dkt. No. 30.) The following day, the Court issued a second Order of Service directing the Marshals to serve Chauvin at her

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

last known address. (Dkt. No. 31.) On January 28, 2019, the Marshals indicated that they were unable to complete service, as service by mail and three attempts to serve Chauvin at her last known address were unsuccessful. (Dkt. No. 41.) On March 19, 2020, Plaintiff moved for an extension of time to serve Chauvin. (Dkt. No. 47.) The Court granted this request, providing Plaintiff until February 9, 2021 to serve Chauvin. (Dkt. No. 52.) The Court also requested that the Marshals attempt to serve Chauvin again, (*id.*), but did not issue an Order of Service.

Because Plaintiff has been granted permission to proceed IFP, Plaintiff is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although the Court provided Plaintiff until February 9, 2021 to serve Chauvin, (*see* Dkt. No. 52), Plaintiff likely is not aware that service was not yet attempted again at Chauvin’s last known address. The Court therefore extends the time to serve until April 23, 2021. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Chauvin through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for this defendant. The Clerk of Court is further instructed to issue a

summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon this defendant. Because service by mail at this address was already ineffective, (*see* Dkt. No 41), the Marshals are respectfully directed to attempt in-person service of Chauvin.

Plaintiff must notify the Court in writing if Plaintiff's address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Clerk of Court is further instructed to issue a summons, complete the USM-285 forms with the address for Defendant K. Chauvin, and deliver all documents necessary to effect service to the U.S. Marshals Service. The U.S. Marshals Service is respectfully directed to attempt in-person service.

SO ORDERED.

Dated: February 9, 2021
White Plains, New York



KENNETH M. KARAS
United States District Judge

DEFENDANT AND SERVICE ADDRESS

1. K. Chauvin
354 Sunset Hill Road
East Fishkill, New York 12524