

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CV-116-D

ALAN PITTS, et al.,)
)
Plaintiffs,)
)
v.)
)
JAMES D. O'GEARY, et al.,)
)
Defendants.)

ORDER

On February 15, 2013, Alan Pitts, Seneca Nicholson-Pitts, Deryl Von Williams, and Charles Douglas (“plaintiffs”) filed a pro se complaint and a motion to certify a three-judge panel under the Voting Rights Act of 1965, 42 U.S.C. § 1973c, 42 U.S.C. § 1983, and 42 U.S.C. § 1985 [D.E. 1, 3]. The complaint is thirty pages long, exclusive of numerous attachments, and names as defendants fourteen individuals in their individual and official capacities (apparently) and five entities. Essentially, plaintiffs appear to contest issues surrounding the October 2011 and May 2012 municipal elections in Henderson, North Carolina. See Compl. 2, 15. Plaintiffs request injunctive relief, declaratory relief, and punitive damages. The complaint appears to be identical to a complaint previously dismissed without prejudice by this court. See Pitts v. O’Geary, 914 F. Supp. 2d 729 (E.D.N.C. 2012).

On February 21, 2013, the court issued summonses as to defendants Gary O. Bartlett, City of Henderson, Sara M. Coffey, Garry Daeke, Lonnie Davis, Jr., George M. Daye, Frank Frazier, Faye Gill, Ray Griffin, Michael C. Inscoc, James Kearney, North Carolina Board of Elections, North Carolina General Assembly, James D. O’Geary, Brenda G. Peace-Jenkins, D. Micheal Rainey, Vance County Board of Elections, John Zollicoffer, Jr., and mailed the summonses to plaintiffs [D.E. 4].

The record states that the summonses “were sent to the Plaintiff via US Mail to obtain service.” Id.

On March 4, 2013, mail sent to Alan Pitts enclosing the issued summonses was returned to the clerk as undeliverable [D.E. 5]. On March 13, 2013, mail sent to Charles Douglas was returned to the clerk as undeliverable [D.E. 7].

On June 20, 2013, defendants Sara M. Coffey, Garry Daeke, Lonnie Davis, Jr., George M. Daye, Frank Frazier, Ray Griffin, Michael C. Inscoc, James Kearney, James D. O’Geary, Brenda G. Peace-Jenkins, D. Micheal Rainey, and John Zollicoffer, Jr. filed a motion to dismiss [D.E. 8].


On July 15 and 16, 2013, plaintiffs Alan Pitts and Seneca Nicholson-Pitts filed motions to extend the time to respond to the motion to dismiss [D.E. 11–12]. In the motions, plaintiffs state that “Defendants Motion To Dismiss is premised on the notion that Plaintiffs have fail to serve the Defendant with the required 120 day period. However, the Clerk has yet to return the summons provided to it for execution and the period has yet to run.” Id. 2.

Because it is not clear from the record that the court-issued summonses were mailed to each of the four plaintiffs at the plaintiffs’ correct addresses [D.E. 4, 5, 7], the court directs the clerk to reissue the summonses and to mail the summonses to each of the four plaintiffs at the most current addresses provided by plaintiffs.

Plaintiffs’ motion to certify a three-judge panel [D.E. 3] is DENIED WITHOUT PREJUDICE. See Pitts, 914 F. Supp. 2d at 732. The court will revisit the issue once it ensures that there are no jurisdictional defects. Id. Plaintiffs’ motions [D.E. 11, 12] to extend the time to respond to defendants’ motion to dismiss are GRANTED. Plaintiffs Alan Pitts and Charles Douglas are DIRECTED to provide the clerk with their current addresses. The clerk is DIRECTED to reissue the summonses and to mail the court-issued summonses to each of the four plaintiffs at the plaintiffs’ most recent addresses. Plaintiffs shall effect service of process in accordance with the Federal Rules

of Civil Procedure.

SO ORDERED. This 7 day of August 2013.


JAMES C. DEVER III
Chief United States District Judge