

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

VIRGINIUS R. PHIPPS,)
Plaintiff,)
)
v.)
)
)
BENJAMIN L. GRADY,)
DALE FAIRCLOTH, STRATTON F.)
STOKES, C.L. JOHNSON,)
BLAKE WALLACE, THE DUPLIN)
COUNTY NORTH CAROLINA)
SHERIFF'S OFFICE and DUPLIN)
COUNTY, NORTH CAROLINA,)
Defendants.)

JUDGMENT
No. 7:15-CV-103-F

Decision by Court.

This action came before the Honorable James C. Fox, Senior United States District Judge, for ruling as follows:

IT IS ORDERED, ADJUDGED AND DECREED that pursuant to the court's order dated December 8, 2015, the court respectfully declines to adopt the M&R. All claims against Defendant Faircloth are DISMISSED. As to all other defendants, this action may proceed with regard to Plaintiffs' § 1983 claim arising from the April 30, 2011 incident, while any claims arising from the December 14, 2009 incident are DISMISSED. As to Phipps's malicious prosecution claim against Defendant Grady, this action may proceed under the court's supplemental jurisdiction, to the extent that it arises from the April 30, 2011 incident.

IT IS ORDERED, ADJUDGED AND DECREED that pursuant to the court's order dated August 31, 2016, Defendants' motion [DE-27] to dismiss is ALLOWED. Plaintiffs' claims against Defendants Duplin County Sheriff's Office, Duplin County, and Johnson are DISMISSED. Further, the docket in this action does not reflect that service has been obtained upon Defendants Stratton F. Stokes and Blake Wallace within 90 days of the filing of the complaint. Rule 4(m) of the Federal Rules of Civil Procedure provides that the action shall be dismissed without prejudice as to these defendants unless Plaintiff can demonstrate good cause to the court why such service was not made within the prescribed time period. Plaintiff, therefore, was ORDERED to show cause **within fourteen (14) days** of the filing date of the order why Defendants Stokes and Wallace were not timely served in this matter. Failure to show cause within the time allotted will result in dismissal of Defendants Stokes and Wallace without prejudice.

IT IS FINALLY ORDERED, ADJUDGED AND DECREED that Plaintiff has not responded to the court's August 31, 2016 Order. Accordingly, Plaintiffs claims against Defendants Stokes and Wallace are DISMISSED without prejudice. A single claim remains-Plaintiffs North Carolina common law claim for malicious prosecution against Defendant Benjamin L. Grady. The court's power to adjudicate that claim rests solely on supplemental jurisdiction, which no longer exists in this case. Accordingly, Defendant Grady's motion to dismiss [DE-42] is ALLOWED and his motion to stay [DE-44] is DISMISSED as moot. The Clerk of Court is DIRECTED to close this case.

This Judgment Filed and Entered on October 25, 2016, and Copies To:

Virginius R. Phipps (via US Mail to 812 Warren Road, Faison, NC 28341)

Derek M. Crump (via CM/ECF Notice of Electronic Filing)

Tommy W. Jarrett (via CM/ECF Notice of Electronic Filing)

DATE
October 25, 2016

JULIE RICHARDS JOHNSTON, CLERK
/s/ Susan K. Edwards
(By) Susan K. Edwards, Deputy Clerk