

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:18-cv-103-MOC**

STANLEY CORBETT, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 FRANK PERRY, et al.,)
)
 Defendants.)
 _____)

ORDER

THIS MATTER is before the Court on periodic review of the record.

Incarcerated Plaintiff filed a *pro se* Complaint pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985 and the North Carolina Tort Claims Act addressing incidents that allegedly occurred at the Lanesboro Correctional Institution. The Complaint passed initial review against Defendants including Lee Alan Rushing,¹ a registered nurse. See (Doc. No. 9). The North Carolina Department of Public Safety (NCDPS) was not able to waive service for Defendant Rushing because he is no longer an NCDPS employee, but provided Defendant Rushing’s last known address under seal. (Doc. No. 14). The Court directed the U.S. Marshals Service to use reasonable efforts to locate and serve Defendant Rushing. (Doc. No. 15). The summons was returned unexecuted, (Doc. No. 25), and the U.S. Marshals Service was again instructed to use reasonable efforts to locate and obtain service on Defendant Rushing. (Doc. No. 27). The summons was again returned unexecuted. (Doc. No. 34).

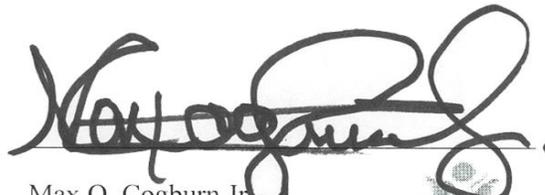
Plaintiff was then instructed to show cause why Defendant Rushing should not be dismissed from this action for lack of service pursuant to Rule 4(m) of the Federal Rules of Civil

¹ “FNU Rushin” in the Complaint.

Procedure. (Doc. No. 50). Plaintiff was cautioned that the failure to comply with the Order would likely result in the dismissal of Defendant Rushing from this action without prejudice. (Id.). Plaintiff failed to file a response and the time to do so has long expired. Defendant Rushing will therefore be dismissed from this action without prejudice.

IT IS, THEREFORE, ORDERED that Defendant Lee Alan Rushing is dismissed from this action without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure and this Court's Order, (Doc. No. 50).

Signed: October 6, 2020



Max O. Cogburn Jr.
United States District Judge