UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

EDWARD KIMMIE,   )   CASE NO. 1:09CV628
)
        Plaintiff,   )
)   JUDGE CHRISTOPHER A. BOYKO
        vs.   )
)   O R D E R
LT. JAMISON,   )
OFFICER J. MOORE,   )
)
        Defendants.   )
)

On March 23, 2009, *pro se* Plaintiff Edward Kimmie ("Kimmie") filed a Complaint in this Court alleging he was denied medication; jumped on; kicked; hit and thrown to the floor on September 30, 2008 by Lt. Jamison and Assaulted on February 20, 2009 by Officer J. Moore, all in violation of 42 U.S.C. § 1983.

On July 28, 2009, the Court issued its "Memorandum, Opinion and Order dismissing Plaintiffs' claims against Ohio Department of Rehabilitation and Correction ("ODRC") Chief Inspector Gary Croft, ODRC Chief of the Bureau of Medical Services Annette Chambers, TCI Health Services Administrator Ms. Champney, TCI Physician Dr. Kline, SOCF Officer J. Moore[1], SOCF Physicians, Dr. Mendel and Dr. C. Bautista and SOCF Institutional Inspector Ms. Mahlam. The action proceeded solely on Kimmie's claims of use of excessive force against Officer J. Moore and Lt Jamison.

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[1]

On 2/23/10, the Court issued an "Amended Memorandum, Opinion and Order," (nunc pro tunc 7/28/09), concluding this action shall proceed on Kimmie's claims of use of excessive force against Officer Moore and Lt. Jamison.

Kimmie was ordered to provide completed U.S. Marshal forms and summonses with proper addresses for service upon Officer J. Moore and Lt Jamison. U.S. Marshal forms and an Order granting *informa pauperis* were issued to the United States Marshal for service on December 10, 2009.

On December 29 and December 30, 2009, "Return of Service by U.S. Marshal" was returned unexecuted upon Lt. Jamison and Officer J. Moore, *respectively*. "Service attempted by Certified Mail was filed on behalf of Edward Kimmie on December 21, 2009, ECF. Docs. 21 and 22.

Kimmie served summonses on Officer J. Moore and Lt. Jamison in care of "The Ohio Attorney General, 30 E. Broad Street, 16th Floor, Columbus, OH 43215." According to the Ohio Attorney General, "These items [summonses] were sent to our office and accepted in error by our mailroom. Lt. Jamison and Officer J. Moore are not employed with our office."

On January 7, 2010, Kimmie resubmitted U.S. Marshal forms and summonses[2] for service on Lt. Jamison and Officer J. Moore, in care of the Ohio Attorney General, 30 E. Broad Street, Columbus, OH, 43215 after receiving official notification by the Ohio Attorney General's Office rejecting service.

On March 8, 2010, this Court issued an Order for Kimmie to Show Cause why this matter should not be dismissed for failure to perfect service pursuant to Rule 4(m) of the Fed.R.Civ.P. Kimmie filed a response on March 17, 2010 stating Fed.R.Civ.P 4(e)(i) allows service of process in the State in which the district court is located, [*LSJ Inv Co, Inc. v O.L.D. Inc.*,] 167 F. 3d 320, 322-23 (6th Circuit 1999) under Ohio R. Civ.P. 4.2.(1), that

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[2] Marked as "Received" and not filed.

service may be made upon the State of Ohio or any one of it's department, offices and institutions by serving the officer responsible for the administration of the department, officer of the institution or by serving the Attorney General of this State. However, Ohio Rule of Civil Procedure 4.2 cited by Kimmie does not apply to serving state employees in their individual capacities.

Accordingly, the Attorney General's Office has rejected service on behalf of Officer J. Moore and Lt. Jamison; Kimmie has failed to provide new or current addresses for Officer J. Moore or Lt. Jamison; Service by the United States Marshal has been returned unexecuted; Kimmie has failed to offer good cause as to why service has not been perfected within the specified time; and more than 120 days have passed since the filing of the Complaint.

Therefore, Kimmie's claims against Defendants Officer J. Moore and Lt. Jamison are dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: April 30, 2010

s/Christopher A. Boyko
HONORABLE CHRISTOPHER A. BOYKO
UNITED STATES DISTRICT JUDGE