

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

David A. Joseph, Sr.,

Plaintiff,

v.

Licking County, et al.,

Defendants.

Case No. 2:12-cv-803

Judge Graham

Opinion and Order

This matter is before the court on the motion of defendant Licking-Muskingum Community Corrections Center (LMCCC) to dismiss the sole remaining claim in this action. The claim is asserted by plaintiff David A. Joseph, Sr. under the Americans with Disabilities Act.

LMCCC moves to dismiss on the grounds that it was not served with process as required by Rule 4 of the Federal Rules of Civil Procedure. A summons was issued to LMCCC on January 16, 2013. On January 24, 2013, the summons was returned to sender as unserved due to vacancy. Counsel states that LMCCC has long ceased operations and the property to which plaintiff directed the summons was vacant. There is no indication from the court's docket that plaintiff made any further efforts to serve LMCCC.

Rule 4(m) provides that if a defendant is not served within 120 days after the complaint is filed, the court, on motion, may dismiss the action without prejudice. The complaint here was filed on October 1, 2012. More than one year later, plaintiff has not served LMCCC, nor has he responded to the motion to dismiss.

Accordingly, the motion to dismiss is GRANTED (doc. 28) and the complaint is dismissed without prejudice.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: December 18, 2013