

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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|-------------------------------|---|---|
| JOHN BUTLER, |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 18-141 Erie |
| |) | |
| v. |) | |
| |) | |
| HOWARD SISSEM, et al., |) | Magistrate Judge Richard A. Lanzillo |
| |) | |
| Defendants. |) | |

MEMORANDUM ORDER

Plaintiff John Butler (“Plaintiff”) initiated this civil rights action against, *inter alia*, Dr. Jose Boggio, the former prison physician at SCI-Albion. Id. Plaintiff’s initial attempt to have the United States Marshals Service effectuate service on Dr. Boggio failed because Plaintiff could not identify a current address for Dr. Boggio. ECF Entry 6/29/18. On September 18, 2018, the Court ordered Plaintiff to show cause for his failure to submit the proper paperwork to the U.S. Marshal for service on Defendant Boggio. ECF No. 18. In his response, Plaintiff indicated that he had diligently attempted to find Dr. Boggio’s address but had been unable to do so because he was not allowed to access the internet and because staff at SCI-Albion declined to provide Boggio’s address to him. ECF No. 22. Based on Plaintiff’s failure to demonstrate good cause for his inability to effectuate service, the Court dismissed Dr. Boggio from this action, without prejudice, pursuant to Rule 4(m) on November 7, 2018. ECF No. 26.

Pending before the Court is Plaintiff’s Motion for Leave to Serve Defendant Boggio. ECF No. 43. In his motion, Plaintiff avers that he has now obtained a correct address for Dr.

Boggio and requests another attempt to effectuate service. ECF No. 44 at 4. Plaintiff suggests that he has exercised due diligence throughout this litigation, including in his attempts to serve Dr. Boggio, and maintains that the statute of limitations does not appear to have run on his claims against Dr. Boggio. Id. In addition, Plaintiff notes that counsel for the other defendants in this action inadvertently entered an appearance on behalf of Dr. Boggio on July 26, 2018, leading him to believe that Dr. Boggio had already been served. See ECF Nos. 10, 12, 17.

In light of the foregoing, and given that Dr. Boggio's dismissal from this action was without prejudice, the Court concludes that Plaintiff has demonstrated good cause for his request for an extension of the time to effectuate service under Rule 4(m). See, e.g., George v. Warden, 523 Fed. Appx. 904, 908 n. 8 (3d Cir. 2013) (noting that the time for proper service must be extended where plaintiff has demonstrated good cause) (citing Fed. R. Civ. P. 4(m)).

Accordingly, Plaintiff's Motion for Leave to Serve Defendant Boggio (ECF No. 43) is

GRANTED. Plaintiff is instructed to submit a USM-285 form for Dr. Boggio containing his correct address within thirty (30) days of the date of this Order. Upon receipt of the required USM-285 form, the Court will order the United States Marshals Service to attempt to serve Dr. Boggio at the provided address.

IT IS SO ORDERED.

/s/ Richard A. Lanzillo
RICHARD A. LANZILLO
United States Magistrate Judge

Dated: January 23, 2019