

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

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| JAMES HAMMONDS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| |) | |
| v. |) | Civil Action No. 14-514 |
| |) | |
| JANET L. DOLAN, Director of Bureau of |) | |
| Driver Licensing, |) | |
| |) | |
| Defendant. |) | |
| |) | |

MEMORANDUM ORDER

Plaintiff, James Hammonds (“Hammonds”), sought leave to proceed in forma pauperis on April 21, 2014. (ECF No. 1.) Leave was granted and on April 22, 2014, his pro se complaint was filed against Janet L. Dolan, Director of Bureau of Driver Licensing (“Dolan”). In his complaint, Hammonds contends that Dolan denied him “Procedural due process required by the Fourteenth Amendment” by imposing certain conditions before reinstating his driving privileges following his conviction for driving under the influence. Attached as an exhibit to the complaint is a “Restoration Requirements Letter” from the Commonwealth of Pennsylvania’s Department of Transportation (“PA DOT”), dated April 11, 2014, listing what Hammonds “must do to restore [his] driving privilege.” (ECF No. 2-2 at 3.) The conditions to which Hammonds objects are a) installation of an ignition interlock, and b) completion of a court-ordered treatment program for alcohol or drug addiction. (ECF No. 2 at 2.)

Hammonds certified that the complaint, request for waiver of service of summons, and related documents were “served by mail” on: Janet Dolan, Bureau of Driving Licensing, 1101 S. Front Street, Harrisburg, PA 17104. (ECF No. 2 at 3.)

On May 29, 2014, Hammonds filed a document entitled “Motion for Summary Judgment and Motion to Amend Complaint” in which he asks the court to substitute Kara N. Templeton (“Templeton”) as the named Director of Bureau of Driver Licensing, and to award him a reasonable attorneys’ fee and “restore his driving privilege.” (ECF No. 5 at 1.) Hammonds finds this relief to be appropriate because “defendant ignored the proper procedure to answer a civil complaint.” (Id.) Attached to this filing are two letters from the PA DOT: (1) a second “Restoration Requirements Letter”, dated May 21, 2014; and (2) a letter from Templeton, dated May 22, 2014, indicating that Hammonds is correct that he need not comply with the ignition interlock requirement, but must nevertheless complete the court-ordered treatment program in order to have his driving privilege restored. (ECF Nos. 5-1 and 5-2.)

There is no indication on the docket that the complaint was properly served. Although Hammonds indicates that he mailed a waiver of service form to Dolan, the docket does not reflect that the waiver form was executed and returned. In any event, the waiver of service procedure only applies to service of particular defendants. FED. R. CIV. P. 4(d)(1). The docket does not reflect that the clerk of court ever issued a summons so that Hammonds could otherwise execute service of the complaint in accordance with Rule 4.

Federal Rule of Civil Procedure 15(a)(1)(A) allows a party to amend its pleading once as a matter of course within “21 days after serving it.” Federal Rule of Civil Procedure 15(a)(2) allows a party, in all other cases, to seek the court’s leave to amend a pleading. Rule 15(a)(2) indicates that leave should be “freely give[n]... when justice so requires.” Because the complaint has not yet been served, the court finds that Hammonds should be granted leave to amend the complaint to name Templeton as the Bureau’s Director. FED. R. CIV. P. 15(a)(2).

Because the complaint has not yet been properly served, and no defendant has entered an appearance in this case, entering judgment as a matter of law in Hammonds' favor, and awarding him attorneys' fees and restoring his driving privilege, is premature and inappropriate. Hammonds must first serve the complaint upon defendant in accordance with the appropriate procedures and time limits set forth in Rule 4. The court will thereafter set a schedule for, among other things, the submission of dispositive motions. No such motions will be entertained prior to that schedule being set.

AND NOW, this 4th day of June 2014, it is HEREBY ORDERED that Hammonds "Motion for Summary Judgment and Motion to Amend Complaint" (ECF No. 5) is granted, in part, and denied, in part. Hammonds is granted leave to file an amended complaint to substitute the name of Kara N. Templeton as the Director of Bureau of Driver Licensing. An amended complaint must be filed within twenty (20) days of the entry of this order on the docket of the above-captioned case. Hammonds' motion is DENIED in all other respects.

BY THE COURT:

/s/ Joy Flowers Conti

Joy Flowers Conti

Chief United States District Judge

cc: JAMES HAMMONDS
501 Washington Ave.
Clairton, PA 15025