

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Anthony James, #310987, a/k/a Anthony)	C/A No.: 1:10-2794-HMH-SVH
Glenn James, Jr.,)	
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
Lt. Wonda Scarborough,)	
)	
Defendant.)	
)	

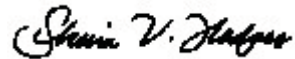
This matter comes before the court on Defendant’s Motion for Summary Judgment [Entry #71]. In her motion, Defendant argues that the complaint should be dismissed for Plaintiff’s alleged failure to properly serve the summons and complaint in this matter pursuant to Fed. R. Civ. P. 12(b)(5). The court notes that, although Defendant’s answer [Entry #18] contained a variety of defenses including a defense pursuant to Rule 12(b)(5),¹ Defendant has litigated this case since filing her answer without pursuing such defenses.

In light of the procedural age of this case, counsel for Defendant is directed to indicate to the court by November 8, 2011, by a filing on the docket, whether he can accept service of process on behalf of Defendant or whether Defendant will waive service. If Defendant accepts or waives service, this case will proceed on the parties’

¹ Defendants’ answer, filed jointly with previously-dismissed defendant Padula, also contained defenses pursuant to Fed. R. Civ. P. 12(b)(2), 12(b)(4), and 12(b)(6), which often do not require discovery. Defendant has provided no indication that she expects to pursue these defenses in the course of litigation.

motions. If Defendant does not accept or waive service, the court will determine whether Defendant has met her burden of proof in showing that she was not properly served in this matter. In the event that the court determines Defendant has not been properly served, the court will grant Plaintiff additional time to serve her and permit discovery on the same, if necessary. Additionally, Defendant's motion for summary judgment may be denied without prejudice as premature.

IT IS SO ORDERED.



October 26, 2011
Florence, South Carolina

Shiva V. Hodges
United States Magistrate Judge