

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TELZY DENNIS,

§

Plaintiff,

§

§

v.

§

No. 2:15-CV-00026-JRG-RSP

§

NIKE, INC.,

§

§

Defendant.

§

§

ORDER

The above entitled and numbered civil action was referred to United States Magistrate Judge Roy S. Payne pursuant to 28 U.S.C. § 636. Now before the Court is the Report and Recommendation (Dkt. No. 3) of Magistrate Judge Payne, which recommends that Plaintiff's case be dismissed without prejudice for failing to timely serve the Complaint.

Plaintiff has not objected to the Report. Nor has Plaintiff actually served the Complaint. Instead, Plaintiff has moved to continue the case, (Dkt. No. 5), demanded a jury, (Dkt. No. 7), and demanded settlement from Nike, (Dkt. No. 9). Moreover, Plaintiff filed these documents *pro se*, despite still being represented by counsel.

A district court may dismiss a case without prejudice if the plaintiff fails to serve the defendant within 90 days of filing the complaint. Fed. R. Civ. P. 4(m). If, however, the plaintiff can establish good cause for failing to serve the defendant, the court must extend the time for service. *Thompson v. Brown*, 91 F.3d 20, 21 (5th Cir. 1996).

Here, however, Plaintiff has not established good cause. Instead, Plaintiff simply blames his attorney for failing to serve the Complaint and not honoring the terms of the engagement. *See*

Pl.'s Mot. for Continuance (Dkt. No. 5). Even if such blame is appropriate, Plaintiff's counsel acts—or in this case, doesn't act—on Plaintiff's behalf before the Court. Thus, that Plaintiff's counsel may have failed to serve the Complaint as required by the terms of engagement does not by itself establish good cause for the two-and-a-half year delay. In light of that, Magistrate Judge Payne's recommendation for dismissal without prejudice is correct.

IT IS THEREFORE ORDERED that the Report and Recommendation (Dkt. No. 3) is **ADOPTED**, and this action is **DISMISSED WITHOUT PREJUDICE**.

So ORDERED and SIGNED this 21st day of September, 2017.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE