

FILED: January 5, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7541
(3:19-cv-00947-REP-EWH)

ROY FRANKLIN ECHOLS, JR.

Plaintiff - Appellant

v.

CSX TRANSPORTATION, INCORPORATED

Defendant - Appellee

ORDER

The court dismisses this proceeding for failure to prosecute pursuant to
Local Rule 45.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

FILED: December 9, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7541
(3:19-cv-00947-REP-EWH)

ROY FRANKLIN ECHOLS, JR.

Plaintiff - Appellant

v.

CSX TRANSPORTATION, INCORPORATED

Defendant - Appellee

O R D E R

The court defers consideration of the motion for appointment of counsel pending review of the appeal on the merits after completion of informal briefing and satisfaction of the fee requirement.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

FILED: January 5, 2022

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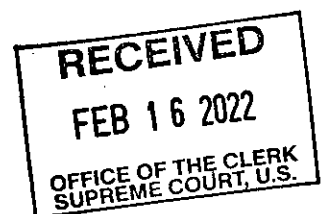
Defendant - Appellee

RULE 45 MANDATE

This court's order dismissing this appeal pursuant to Local Rule 45 takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

ROY FRANKLIN ECHOLS,

Plaintiff,

v.

Civil Action No. 3:19CV947

CSX TRANSPORTATION,

Defendant.

MEMORANDUM OPINION

Roy Franklin Echols, a Virginia inmate proceeding pro se, filed this action. By Memorandum Opinion and Order entered on July 27, 2021, the Court dismissed the action without prejudice because Echols failed to timely serve CSX Transportation ("CSX"). (ECF Nos. 23, 24.) The matter is before the Court on Echols's Motion For Reconsideration. (ECF No. 25.) For the reasons set forth below, the Motion For Reconsideration (ECF No. 25) will be denied.¹

I. PROCEDURAL HISTORY

Pursuant to Federal Rule of Civil Procedure 4(m), Echols had ninety (90) days from the filing of the complaint to serve CSX.

Here, that period commenced on March 4, 2021. By Memorandum Order

¹ The Court employs the pagination assigned by the CM/ECF docketing system. The Court corrects the capitalization, punctuation, and spelling in the quotations from Echols's submissions.

entered on that date, the Court directed Echols to provide the Court with the address for CSX if he wanted the assistance of the Marshal in serving CSX. (ECF No. 17.)

On May 4, 2021, Echols responded that CSX could be served at: "500 East Main Street, Richmond, Virginia 23219." (ECF No. 18.)

On May 5, 2021, the Clerk issued process for CSX at the address provided by Echols. (ECF No. 19.) On May 24, 2021, the Marshal returned the summons for CSX unexecuted because the address Echols had provided was the address for a church. (ECF No. 20, at 3.) The Marshal provided Echols with notice of this fact. (Id.) Nevertheless, on June 3, 2021, Echols again informed the Court that CSX could be served at "500 East Main Street, Richmond, Virginia 23219." (ECF No. 21.)

By Memorandum Order entered on June 17, 2021, the Court directed Echols to show good cause, within eleven (11) days of the date of entry thereof, for his failure to serve CSX. More than eleven (11) days elapsed and it appeared that Echols had failed to respond to June 17, 2021 Memorandum Order. Accordingly, by Memorandum Opinion and Order entered on July 27, 2021, the Court ~~dismissed the action without prejudice.~~

On August 11, 2021, the Court received Echols's Motion for Reconsideration.

II. RELIEF UNDER FED. R. CIV. P. 59(e)

"[R]econsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) (citation omitted) (internal quotation marks omitted). The United States Court of Appeals for the Fourth Circuit has recognized three grounds for relief under Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993) (citing Weyerhaeuser Corp. v. Koppers Co., 771 F. Supp. 1406, 1419 (D. Md. 1991); Atkins v. Marathon LeTourneau Co., 130 F.R.D. 625, 626 (S.D. Miss. 1990)).

Here, Echols contends that the Court should set aside the July 27, 2021 Memorandum Opinion and Order because he did respond to the June 17, 2021 Memorandum Order. A review of the Court's correspondence revealed that Echols did respond to the June 17, 2021 Memorandum Order. (ECF No. 28.) Although the Clerk stamped the response received, it failed to electronically file Echols's response until October 15, 2021. (Id.) Nevertheless, as explained below, Echols does not demonstrate good cause for his failure to timely serve CSX.

In his Motion for Reconsideration, Echols vaguely suggests his failure to timely serve CSX should be excused because of

"COVID-19 and incarceration conditions and proceeding pro se under ADA limitations and physical condition of Hogkin's lymphoma stage - three III cancer." (ECF No. 25, at 4.) District courts within the Fourth Circuit have found good cause to extend the ninety-day time period when the plaintiff has made "reasonable, diligent efforts to effect service on the defendant." Venable v. Dep't of Corr., No. 3:05cv821, 2007 WL 5145334, at *1 (E.D. Va. Feb. 7, 2007) (quoting Hammad v. Tate Access Floors, Inc., 31 F. Supp. 2d 524, 528 (D. Md. 1999)). Leniency is especially appropriate when factors beyond the plaintiff's control frustrate his or her diligent efforts. See McCollum v. GENCO Infrastructure Sols., No. 3:10CV210, 2010 WL 5100495, at *2 (E.D. Va. Dec. 7, 2010) (citing T & S Rentals v. United States, 164 F.R.D. 422, 425 (N.D. W.Va. 1996)). Thus, courts are more inclined to find good cause where extenuating factors exist such as active evasion of service by a defendant, T & S Rentals, 164 F.R.D. at 425 (citing Prather v. Raymond Constr. Co., 570 F. Supp. 278, 282 (N.D. Ga. 1982)), or stayed proceedings that delay the issuance of a summons. McCollum, 2010 WL 5100495, at *2 (citing Robinson v. Fountainhead Title Grp. Corp., 447 F. Supp. 2d 478, 485 (D. Md. 2006)). However, "[i]nadvertence, neglect, misunderstanding, ignorance of the rule or its burden, or half-hearted attempts at service' generally are insufficient to show good cause." Venable, 2007 WL 5145334, at *1 (quoting Vincent v. Reynolds Mem'l Hosp., 141 F.R.D. 436, 437 (N.D.

W.Va. 1992)). While a court might take a plaintiff's pro se status into consideration when coming to a conclusion on good cause, Lane v. Lucent Techs., Inc., 388 F. Supp. 2d 590, 597 (M.D.N.C. 2005), neither pro se status nor incarceration alone constitute good cause. Sewraz v. Long, No. 3:08CV100, 2012 WL 214085, at *2 (E.D. Va. Jan. 24, 2012) (citations omitted).

Echols, not the Court, nor the United States Marshal's service, is responsible for providing the appropriate addresses for serving a defendant. See Lee v. Armontrout, 991 F.2d 487, 489 (8th Cir. 1993) (holding that prisoners proceeding in forma pauperis retain responsibility for providing address at which service can be effectuated); see also Geter v. Horning Bros. Mgmt., 502 F. Supp. 2d 69, 70 n.3 (D.D.C. 2007) (advising that in forma pauperis status conveys right to have court effect service only to extent plaintiff provides a valid address).

Here, the Marshal attempted to serve CSX at the address Echols provided to the Court. (ECF No. 25, at 4.) Once Echols learned that the address he had provided was incorrect, it was incumbent upon him to attempt to find the correct address. Echols fails to ~~identify any effort at all on his part to find a correct address~~ for CSX Transportation. Thus, Echols fails to demonstrate that he made a "reasonable, diligent effort[] to effect service on the defendant." Venable, 2007 WL 5145334, at *1 (citation omitted) (internal quotation marks omitted). Echols fails to demonstrate

any basis for relief under Rule 59(e). Echols's Motion for Reconsideration (ECF No. 25) will be denied.

The Clerk is directed to send a copy of the Memorandum Opinion to Echols.

It is so ORDERED.

Date: November 1, 2021
Richmond, Virginia

/s/ *REP*
Robert E. Payne
Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

ROY FRANKLIN ECHOLS,

Plaintiff,

v.

Civil Action No. 3:19CV947

CSX TRANSPORTATION,

Defendant.

ORDER

In accordance with the accompanying Memorandum Opinion, it is ORDERED that Echols's Motion for Reconsideration (ECF No. 25) is denied.

Any appeal from this decision must be taken by filing a written notice of appeal with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a timely notice of appeal may result in the loss of the right to appeal.

~~The Clerk is directed to send a copy of the Order to Echols.~~

It is so ORDERED.

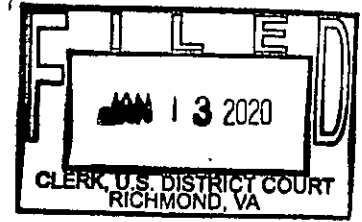
/s/

RSP

Robert E. Payne
Senior United States District Judge

Date: November 1, 2021
Richmond, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



ROY FRANKLIN ECHOLS, JR.,

Plaintiff,

v.

Civil Action No. 3:19CV947

CSX TRANSPORTATION INCORPORATED,

Defendant.

MEMORANDUM ORDER
(Conditionally Docketing Action)

Plaintiff, a Virginia inmate, has submitted this civil action. He also has applied to proceed *in forma pauperis*. It is ORDERED that:

1. This action is CONDITIONALLY docketed.
2. Within thirty (30) days from the date of entry hereof, Plaintiff must submit a statement under oath or under penalty of perjury that:
 - (A) Identifies the nature of the action;
 - (B) States his belief that he is entitled to relief;
 - (C) Avers that he is unable to prepay fees or give security therefor; and,
 - (D) Includes a statement of the assets he possesses.

The Court is forwarding to Plaintiff an affidavit for compliance with the above procedures. Failure to complete the affidavit in its entirety will result in summary dismissal of the action.

3. The Clerk shall obtain a certified copy of Plaintiff's trust fund account for the six (6) month period immediately preceding the initiation of this action.
4. Plaintiff must affirm his intention to pay the entire \$350.00 filing fee. Accordingly, he is required to read, sign, and return to the Court the enclosed consent to collection of fees form within thirty (30) days of the date of entry hereof.

5. Failure to comply strictly with any of the above time requirements will result in summary dismissal of the action. *See* Fed. R. Civ. P. 41(b).

6. Plaintiff need not comply with paragraphs 1 through 5 if he submits the full \$350.00 filing fee, a \$50.00 administrative fee, and withdraws his request to proceed *in forma pauperis* within thirty (30) days of the date of entry hereof.

7. Plaintiff is prohibited from filing any other pleadings, motions, memoranda, or material not specifically required herein or otherwise specifically ordered by the Court until he is granted leave to proceed *in forma pauperis* or pays the full filing fee. Any documents submitted in violation of this paragraph will not be considered. Moreover, Plaintiff is REQUIRED to write the case number on any submission. Plaintiff's Motion for the Appointment of Counsel (ECF No. 3) is DENIED WITHOUT PREJUDICE.

8. Each submission must bear the appropriate civil action number for the case to which it pertains. If Plaintiff has more than one action pending and Plaintiff fails to identify a case number on any submission, the Court will only docket that submission in the earliest filed case. Plaintiff may also not submit one single response to comport with the directives of the Court in more than one individual case. Instead, Plaintiff must submit a separate response for each individual action. If Plaintiff attempts to submit one response listing a group of case numbers, the Court will only docket that submission in the first-listed civil action on that submission. The Court will not consider the submission as a response in any other civil action.


9. The Court DOES NOT ACCEPT documents or pleadings submitted on paper that exceeds 8½ inches by 11 inches in size, or that contains writing on the reverse side of a page. **ANY SUBMISSION MADE IN VIOLATION OF THIS PARAGRAPH WILL NOT BE CONSIDERED BY THE COURT.**

10. Plaintiff must immediately advise the Court of his new address in the event that he is transferred, released, or otherwise relocated while the action is pending. **FAILURE TO DO SO WILL RESULT IN DISMISSAL OF THE ACTION.**

11. All correspondence for the Court shall be directed to: Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse, 701 East Broad Street, Richmond, VA 23219.

The Clerk is DIRECTED to send a copy of this Memorandum Order to Plaintiff.

It is so ORDERED.

/s/ 
Roderick C. Young
United States Magistrate Judge

Date: January 13, 2020
Richmond, Virginia

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ROY FRANKLIN ECHOLS,

Plaintiff,

v.

Civil Action No. **3:19CV947**

CSX TRANSPORTATION, INCORPORATED,

Defendant.

MEMORANDUM ORDER

(Filing and Screening Action upon Inmate's Payment of the Full Filing Fee)

Plaintiff, a Virginia prisoner, has submitted this action. On March 10, 2020, Plaintiff paid the full filing fee. Accordingly, it is ORDERED that:

1. The action is FILED.
2. The Court will screen the action pursuant to the Prison Litigation Reform Act.

See 28 U.S.C. § 1915(e)(2).

The Clerk is DIRECTED to send a copy of this Memorandum Order to Plaintiff.

It is so ORDERED.

Date: May 4, 2020.
Richmond, Virginia

/s/ 
Roderick C. Young
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ROY FRANKLIN ECHOLS, JR.,

Plaintiff,

v.

Civil Action No. 3:19CV947

CSX TRANSPORTATION, INC.,

Defendant.

**MEMORANDUM ORDER
(Requiring Plaintiff to Provide an Address for Defendant)**

Plaintiff, a Virginia prisoner proceeding *pro se*, brings this civil action pursuant to the Federal Employers Liability Act (FELA) and the Americans with Disabilities Act (ADA). (ECF No. 1, at 1.) It is hereby ORDERED that:

1. Plaintiff has ninety (90) days from the date of entry hereof to serve the Defendant. *See* Fed. R. Civ. P. 4(m).

2. If Plaintiff wishes the assistance of the Marshal in serving the Defendant, he should promptly provide the Court with a **street address** where the Defendant may be served.¹ Upon the provision of such address, the Clerk will issue process and the Marshal will attempt to serve the Defendant;

3. From this point on, Plaintiff must serve a copy of every pleading and every written motion, notice, and similar paper on all parties. Service shall be made by mailing a copy of the

¹ The Court notes that in his initial submission, Echols provided three different addresses for the Defendant. (ECF No. 1-4, at 1.) It is not the obligation of the Court, nor the Marshal's service, to discern which of these addresses is the proper location to effect service. To the extent Echols would like to avail himself of the Marshal's assistance in serving the Defendant, it is his duty to identify one address where the Defendant may be served and provide it forthwith.

document to the parties' attorneys. Plaintiff is advised that no document submitted by him will be considered unless he also attaches a certificate which states that he has mailed copies of the document to all counsel and, if the parties are not represented by counsel, to the parties themselves. The certificate must also show the date and manner of service. Any future documents submitted by Plaintiff that fail to comply with the above requirements will not be considered by the Court;

4. Plaintiff must immediately advise the Court of a new address in the event that he is transferred, released, or otherwise relocated while the action is pending. FAILURE TO DO SO MAY RESULT IN DISMISSAL OF THE ACTION;

5. The Court DOES NOT ACCEPT documents or pleadings submitted on paper which exceeds 8½ inches by 11 inches in size, or which contains writing on the reverse side of a page. ANY SUBMISSION MADE IN VIOLATION OF THIS PARAGRAPH WILL NOT BE CONSIDERED BY THE COURT;

6. Rule 7(E) of the Local Civil Rules for the United States District Court for the Eastern District of Virginia shall not apply to this action; and,

7. Plaintiff is advised that the Court will not consider as evidence in opposition to any motion for summary judgment a memorandum of law and facts that is sworn to under penalty of perjury. Rather, any verified allegations must be set forth in a separate document titled "Affidavit" or "Sworn Statement," and reflect that the sworn statements of fact are made on personal knowledge and that the affiant is competent to testify on the matter stated therein. *See* Fed. R. Civ. P. 56(c)(4).

8. Echols has also moved the Court for the appointment of counsel. (ECF No. 16.) Counsel need not be appointed in civil matters unless the case presents complex issues or exceptional circumstances. *See Fowler v. Lee*, 18 F. App'x 164, 166 (4th Cir. 2001) (citation

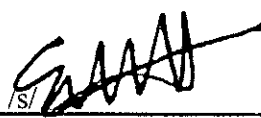
omitted). This action presents no complex issues or exceptional circumstances. Additionally, Plaintiff's pleadings demonstrate that he is competent to represent himself in the action. Accordingly, Plaintiff's Motion for the Appointment of Counsel (ECF No. 16) is DENIED WITHOUT PREJUDICE.

9. Finally, Echols has filed a document that he calls a Motion to Show Cause, in which he attempts to submit various medical records "in support of his FELA Complaint." (ECF No. 14, at 1.) The Motion is not addressed to any party in particular, nor does it seek to compel a showing of cause to justify a particular position. Rather, it appears to be an improper attempt by Echols to supplement the record. As such, the Motion (ECF No. 14) is DENIED WITHOUT PREJUDICE.

The Clerk is DIRECTED to send a copy of this Memorandum Order to Plaintiff.

It is so ORDERED.

Date: March 4, 2021
Richmond, Virginia


Elizabeth W. Hanes
United States Magistrate Judge

AFFIDAVIT

I, Roy Franklin Echols, Jr., offer this Affidavit in support of this Petition For A Writ of Certiorari, to protect my Constitutional right in this Legal process before the United States Supreme Ct., AS Follows:

I, base my belief in this Affidavit on the Following Fact: I declare that I had No Knowledge or Notice "On May 24, 2021, the U.S. Marshal Service returned the Summons For CSX unexecuted because the Address Echols had provided was the Address For A Church". Until Judge Robert E. Payne on November 1, 2021, by Memorandum order, provided me Notice of this Fact. (I.d.).

I, Agree to Appear in A Federal Court of Law, And testify under oath if A Warrant, Summons or transportation order is issued in this matter.

I, declare under penalty of perjury that the Foregoing is true And correct to the best of my Knowledge And belief in Accordance with the November 1, 2021, memorandum order pursuant to 28 U.S.C. § 1746; 18 U.S.C. § 1621.

151 Roy F. Echols, Jr.,
Affiant:

Date: February 10, 2022.

**Additional material
from this filing is
available in the
Clerk's Office.**