

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

TONI GREER,)	
)	
Plaintiff,)	
)	
vs.)	No. 02-2262 V
)	
MADISON COUNTY, TENNESSEE,)	
DAVID L. WOOLFORK, SHERIFF,)	
SHELBY COUNTY, TENNESSEE, AND)	
A.C. GILLESS, SHERIFF, AND)	
)	
)	
Defendants.)	

ORDER DENYING DEFENDANTS MADISON COUNTY, TENNESSEE
AND SHERIFF DAVID L. WOOLFORK'S MOTION TO DISMISS

Before the court in this civil rights and tort case is a motion to dismiss filed by defendants Madison County, Tennessee, and Madison County Sheriff David L. Woolfork, on April 25, 2003.¹ The motion is based on lack of personal jurisdiction and insufficiency of service of process. Madison County and Sheriff Woolfork allege that the plaintiff, Toni Greer, failed to serve the complaint on them. Greer responded to the motion on May 23, 2003. The parties have consented to proceed before the United States

¹ This motion does not involve the defendants Shelby County or Shelby County Sheriff A.C. Gilless; these defendants answered Greer's complaint on August 22, 2002. Likewise, the motion does not involve the Madison County Sheriff's Department or the Shelby County Sheriff's Department, which were dismissed from the action on December 10, 2002, by consent order.

Magistrate Judge. For the following reasons, Madison County and Sheriff Woolfork's motion is denied.

On or about April 15, 2001, Greer was arrested at her home pursuant to a warrant issued for the arrest of "Toni Greer." She was transported and detained by law enforcement officers. It was later determined that the individual targeted by the warrant was another Toni Greer, and the plaintiff was released. She subsequently filed this complaint alleging that the defendants deprived her of her rights under the United States Constitution in violation of 42 U.S.C. § 1983; that they violated provisions of the Tennessee constitution; and that they also committed state torts including negligence and loss of reputation. Greer's original complaint was filed in the Western District of Tennessee on April 12, 2002, invoking federal question jurisdiction.

On April 12, 2002, the day the complaint was filed, the clerk of court issued a summons to "Madison County Sheriff's Department c/o attorney C. Jerome Teel." On July 31, 2002, counsel for Greer sent via United States Mail, return receipt requested, a Notice and Acknowledgment of Receipt of Summons and Complaint to 546 East College Street, Jackson, Tennessee, which is the mailing address of the Madison County Sheriff's Department. The cover letter was addressed, "To: Sheriff of Madison County." The return receipt postcard read, "Article Addressed to: David K. Woolfork, Sheriff."

The return receipt was signed by one Linda Gray, with the signature dated August 6, 2002. Greer's counsel filed these documents with the court on August 7, 2002. On May 23, 2003, the day Greer filed a response to the motion to dismiss, a summons was issued by the court for Sheriff Woolfork. Greer admits that no summons personally directed to Sheriff Woolfork issued before May 23, 2003. Also, there is no summons in the file issued specifically to Madison County.

Federal Rule of Civil Procedure 4(m) requires a court to dismiss an action without prejudice "[i]f service of the summons and complaint is not made upon a defendant within 120 days of filing the complaint," or to extend the time for service "if the plaintiff shows good cause for the failure." FED. R. CIV. P. 4(m). Even without a plaintiff's showing of good cause, however, an extension is appropriate when "the applicable statute of limitations would bar the refiled action." FED. R. CIV. P. 4(m) Adv. Comm. Notes to 1993 Amends. (citing *Ditkof v. Owens-Illinois, Inc.*, 114 F.R.D. 104 (E.D. Mich. 1987)). See also *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996) (noting that Rule 4(m) permits an extension even in the absence of good cause).

In this case, the statute of limitations has run. Under both federal and state law, a cause of action accrues when the injury occurs or when a reasonable person should have known or had reason

to know of the injury. *McCroskey v. Bryant Air Conditioning Co.*, 524 S.W.2d 487 (Tenn. 1975); *Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984). Greer's injuries occurred on April 15, 2001, when she was arrested. Without doubt, she knew of her injuries on that date. A dismissal now would effectively dismiss forever Greer's claims against Woolfork and Madison County, because the one-year statute of limitations on Greer's claim ran on April 15, 2002.²

This is not a "relation-back" scenario in which the plaintiff seeks to amend her complaint or to add defendants in new capacities. Greer's original complaint sets forth both individual and official capacity claims:

Each and all of the acts of Defendants alleged herein were done by Defendants, and each of them, as individuals and under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of Tennessee, the ordinances of Memphis, and the County of Shelby and the County of Madison, and under the

² Section 1983 does not contain a statute of limitations. Consequently, courts must look to state law and apply the state's statute of limitations for personal injury actions. *Wilson v. Garcia*, 471 U.S. 261 (1985). In Tennessee, a § 1983 action is governed by the one-year statute of limitations provided in Tenn. Code Ann. § 28-3-104(a)(3), which provides as follows:

(a) The following actions shall be commenced within one (1) year after the cause of action accrued:

. . . .

(3) Civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes

. . . .

authority of their offices as Sheriffs and Deputy Sheriffs for the named counties.

(Compl. at § V.) Nor is there any mistake in the parties named. Accordingly, the motion falls within the *Ditkof* and *Henderson* line of cases, and the court may, at its discretion, extend the 120-day period for a reasonable time to permit proper service. See *Henderson*, 517 U.S. at 662-663.

Unlike the defendants in *Ditkof*, Greer does not adduce any specific facts indicating that these defendants previously participated in the suit. *Cf. Ditkof v. Owens-Illinois, Inc.*, 114 F.R.D. 104 (E.D. Mich. 1987) (granting extension of time to serve when parties claiming a failure of service had joined in a petition to remove and had appeared on all service lists). It is therefore not clear how the moving defendants might have "lulled" Greer into believing service was proper, as Greer claims.

Nevertheless, it still is appropriate to extend the time for service in this case. First, this motion was the first notice Greer received that there was any problem with the service on the moving defendants. *Cf. Alexander v. Light*, 1996 U.S. Dist. LEXIS 20846 (W.D. Mich. 1996) (unpublished) (declining to extend service time when plaintiff had been notified of pending dismissal, ordered to show cause why the claim should not be dismissed, and failed to respond to the show cause order). Second, neither Woolfork nor Madison County claim ignorance of Greer's lawsuit; neither Woolfork

nor Madison County persuasively argue that they will be prejudiced by an obligation to defend the claims against them; and the complaint itself was timely filed. See *Henderson*, 517 U.S. at 659 (implying that timely filing, notice of the claim, lack of prejudice, and proper service when the service was finally achieved all weighed in favor of extending the 120-day time period). Third, Greer's counsel promptly acted to correct the flaw in service by causing a summons to issue on Sheriff Woolfork on May 23, 2003.

In addition, Madison County had actual notice of the claim as evidenced by the acceptance of service of process by the Madison County Sheriff's Department, a division of Madison County. While personal service is "the classic form of notice always adequate in any type of proceeding," due process is satisfied when the attempted service is "reasonably certain to inform those affected." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).³ Moreover, the same attorney represents Madison County

³ Rule 4(j) of the Federal Rules of Civil Procedure governs service of process on states and local government. It provides in pertinent part:

(2) Service upon a state, municipal corporation, or other governmental organization subject to suit shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon such defendant.

FED. R. CIV. P. 4(j). Under Tennessee law, service upon a county is

Sheriff's Department, Madison County, and Sheriff Woolfork. Finally, as discussed above, Rule 4(m) itself approves an extension of the 120-day period when a claim otherwise would be barred by a statute of limitations.

In light of these circumstances, the harsh sanction of dismissal is unwarranted. The court finds that both moving defendants received notice sufficient to satisfy the requirements of due process. For the foregoing reasons, the Rule 4(m) service period is extended for an additional thirty days from the date of this order to permit Greer to perfect service on Madison County and Sheriff Woolfork.

IT IS SO ORDERED this 5th day of June, 2003.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE

effected "by delivering a copy of the summons and of the complaint to the chief executive officer of the county, or if absent from the county, to the county attorney if there is one designated." Tenn. R. Civ. P. § 4.04(7).

Here, the summons was issued to Madison County, Sheriff's Department, c/o C. Jerome Teel, the County Attorney. It was delivered to the Sheriff's Department by signed certified mail and signed for by Linda Gray. It is not clear, however, if the chief executive officer was absent from the county as required by the Tennessee Rules of Civil Procedure.