

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

David Banks, :
 :
 Plaintiff, :
 :
 v. : Case No. 2:05-cv-0713
 :
 Mrs. Rees, (Medical Director), : JUDGE MARBLEY
 et al., :
 :
 Defendants.

REPORT AND RECOMMENDATION

Before the Court is the Ohio Attorney General's second motion to dismiss defendant Lucinda Rees for insufficient service of process under Fed.R.Civ.P. 12(b)(5). For the following reasons, the Court recommends that the motion to dismiss be granted.

The plaintiff, David Banks, filed a complaint in this Court against, among others, Ms. Rees and Judith Royer, alleging various constitutional violations. Mr. Banks failed to perfect service to both Mss. Rees and Royer, so they filed a motion to dismiss for insufficient service of process.

In March 2006, this Court issued a Report and Recommendation concluding that service was insufficient to both Mss. Rees and Royer but recommended that Mr. Banks receive an additional (1) 60 days to provide the Marshal with sufficient information to serve the defendants and (2) 90 days to perfect service. The Report was adopted in its entirety by the United States District Judge on April 20, 2006.

After the Magistrate Judge issued the Report and Recommendation but prior to the District Judge adopting it, Ms. Royer was served on April 28, 2006. Over the course of the past year, Mr. Banks filed several motions for an extension of time within which to perfect service on Ms. Rees. The Court granted

these extensions, but the latest extension expired on March 31, 2007 without service having been made. Mr. Banks has not filed any other motions to extend the service deadline and has not responded to the motion to dismiss.

It has been over a year since the Court issued its Order directing Mr. Banks to perfect service of process on Ms. Rees within 90 days of its April 20, 2006 Order. Mr. Banks has failed to do so even though several extensions were granted. Therefore, the Court RECOMMENDS that Ms. Rees' second motion to dismiss (doc. #43) be GRANTED and Ms. Rees be DISMISSED as a defendant from this lawsuit without prejudice.

/s/ Terence P. Kemp
United States Magistrate Judge