

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 93-1697
Summary Calendar
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CLYDE WAYNE STUART,

Plaintiff-Appellant,

versus

LAWRENCE BRUMLEY, Detective,
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the
Northern District of Texas
(3:93 CV 0221 R)
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(January 13, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.*

PER CURIAM:

Clyde Stuart argues that the district court abused its discretion in failing to determine that there was "good cause" for his failure to make service within 120 days of filing his complaint. If service is not made upon a defendant within 120 days

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

after the filing of a complaint, the action must be dismissed if the party on whose behalf service is required "cannot show good cause why such service was not made within that period." Fed. R. Civ. P. 4(j). "To establish good cause, a litigant must demonstrate 'at least as much as would be required to show excusable neglect, as to which simple inadvertence . . . or ignorance of the rules usually does not suffice.'" *Systems Signs Supplies v. U.S. Dept. of Justice, Washington, D.C.*, 903 F.2d 1011, 1013 (5th Cir. 1990) (citation omitted). The claimant must also make "a showing of good faith and establish some reasonable basis for noncompliance within the time specified." *Id.* (internal quotations and citations omitted). The standard of review is abuse of discretion. *Id.*

Liberally construed, Stuart's objections constitute a motion under Fed. R. Civ. P. 6(b) for an extension of time to make service. See *Cooper v. Sheriff, Lubbock County, Tex.*, 929 F.2d 1078, 1081 (5th Cir. 1991) (pro se pleadings are entitled to liberal construction). Stuart's objections to the magistrate judge's report indicate that he may well have acted in good faith and diligently attempted to obtain the identity and addresses of the officers allegedly involved in the incident to obtain service on them. Stuart, a prison inmate, was proceeding pro se.

In appropriate circumstances, a prison inmate may have a right to conduct discovery to obtain the identities of defendants accused of civil rights violations, especially when it is likely that the information is readily ascertainable. *Murphy v. Kellar*, 950 F.2d

290, 293 (5th Cir. 1992) (case remanded to provide plaintiff prisoner with the opportunity to obtain duty rosters and personnel records to determine identity of his attackers). Courts have also assisted plaintiffs in obtaining service in certain instances. See *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 390 n.2, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) (when agents were not named in the complaint, district court ordered service of the complaint on "those federal agents who it is indicated by the records of the United States Attorney participated in the . . . arrest of [petitioner]."); *Maclin v. Paulson*, 627 F.2d 83, 87 (7th Cir. 1980) (pro se plaintiff need not name the defendants until he can identify the responsible parties by discovery or with the assistance of the court).

The district court abused its discretion in failing to address Stuart's Rule 6(b) motion and by failing to rule explicitly on whether Stuart's conduct constituted "good cause" for failing to make service within 120 days of filing the complaint.

The district court also abused its discretion in failing to address Stuart's motion for appointment of counsel. Following remand, the district court should consider whether Stuart requires the assistance of counsel in prosecuting the remainder of the case. See *Murphy*, 950 F.2d at 293 n.14 (because the plaintiff is a prisoner attempting to discover the identity of prison officials and because competent discovery would assist the court in determining whether the claim has merit, the district court should reconsider the plaintiff's motion for appointment of counsel). In

making this determination, the district court should also consider 1) the type and complexity of the case; 2) the plaintiff's ability adequately to present and investigate the case; 3) the presence of conflicting evidence which will require skill in the presentation of evidence and cross-examination; and 4) the likelihood that an appointment will assist the court and the parties in obtaining a speedy and just determination. *Id.*

The judgment of the district court is VACATED and the action is REMANDED for further proceedings.

VACATED and REMANDED