

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-4965

(Summary Calendar)

KAREN GOODHEART,

Plaintiff-Appellant,

versus

WILLIAM TAYLOR, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CV-443)

(March 24, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

EMILIO M. GARZA, Circuit Judge:*

Karen Goodheart appeals the district court's dismissal of her complaint for failure to effect timely service. See Fed. R. Civ.

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

P. 4(j).¹ Finding no abuse of discretion in the court's ruling as to the absence of good cause, we affirm.

On March 16, 1992, Goodheart filed a pro se complaint against the head of the Federal Deposit Insurance Corporation ("FDIC"), and several FDIC employees, alleging employment discrimination based on sex and a physical handicap, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1988). To comply with Rule 4(j)'s time requirement, Goodheart had to serve the summons and the complaint by July 14, 1992.² None of the named defendants were served by that date.³ On August 18, 1992, the defendants moved to dismiss the complaint for failure to comply with Rule 4(j). Finding no good cause for Goodheart's failure to effect service within 120 days of the filing of the complaint, the magistrate judge recommended that the complaint be dismissed. The

¹ Rule 4(j) provides that "[i]f a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion."

² The service of a summons and complaint upon an officer or agency of the United States is governed by Rules 4(d)(4) and 4(d)(5) of the Federal Rules of Civil Procedure. Those rules require: (1) service on the United States, by delivering a copy of the summons and the complaint to the United States attorney for the district in which the action is brought; and (2) service on the officer or agency by sending a copy of the summons and the complaint by registered or certified mail to such officer or agency.

³ In fact, Goodheart did not deliver a copy of the summons and the complaint to the United States attorney until August 25, 1992.

district court agreed, and subsequently granted the defendants' motion to dismiss. Goodheart filed a timely notice of appeal.

"Under Rule 4(j), dismissal of a plaintiff's complaint is required in the absence of a showing of good cause why service was not timely made." *McGinnis v. Shalala*, 2 F.3d 548, 550 (5th Cir.), *petition for cert. filed*, 62 U.S.L.W. 3429 (Dec. 13, 1993). Such a plaintiff bears the burden of proving good cause, *id.*, which "would appear to require *at least* as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice." *Kersh v. Derozier*, 851 F.2d 1509, 1512 (5th Cir. 1988) (attribution omitted). Pro se plaintiffs are not held to a more lenient standard simply because they are pro se. *See id.* "We review a district court's ruling as to the absence of good cause for abuse of discretion only." *McGinnis*, 2 F.3d at 550.

Goodheart concedes that she failed to serve the summons and the complaint within 120 days of the filing of the complaint. She argues instead that the district court abused its discretion when it ruled that her alleged indigent status and physical incapacity during the 120-day period did not constitute good cause. After our independent review of the record, we fail to find any abuse of discretion in the district court's ruling. Although Goodheart submitted a letter from her doctor detailing her severe allergies during the 120-day period, we cannot conclude from the record that Goodheart's condition was so severe as to prevent her from effecting service. As for Goodheart's alleged lack of funds,

Goodheart concedes that she did not file in forma pauperis her complaint. We therefore reject Goodheart's arguments on appeal.⁴

Accordingly, the district court's judgment is AFFIRMED.

⁴ Because we conclude that Goodheart failed to meet her burden of proving good cause, we also reject Goodheart's challenge to the district court's denial of her motion for enlargement. See Fed. R. Civ. P. 6(b) (allowing a district court to enlarge the time within which an act must be done, after the expiration of the time period for performing the act, if the failure to act "was the result of excusable neglect").