

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 14, 2026

Lyle W. Cayce
Clerk

No. 26-60281
Summary Calendar

ANTHONY MURPHY, SR.,

Plaintiff—Appellant,

versus

JOHN MILLER, *Biloxi Police Department Chief*; MATTHEW BOONE,
Chief Investigator,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:24-CV-385

Before WILLETT, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Acting *sua sponte*, the district court dismissed Anthony Murphy, Sr.'s *pro se* lawsuit for failure to serve the defendants. We review such dismissals for abuse of discretion. Finding none, we AFFIRM.

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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I.

In December 2024, Murphy sued two members of the Biloxi, Mississippi Police Department under 42 U.S.C. § 1983 for alleged civil rights violations related to the death of his son, Anthony Murphy, Jr. Murphy applied for *in forma pauperis* status the same day he filed his complaint. The magistrate judge denied his application a week later because the application was missing a page and Murphy had failed to sign it. A month went by, so on January 27, 2025, the magistrate judge ordered Murphy to renew his IFP application or pay the filing fee by February 18, 2025. Murphy reapplied for IFP status on the day of the deadline. The magistrate judge then issued a Report and Recommendation to deny the application, noting that Murphy's considerable monthly spending on discretionary purchases indicated he had the resources to pay the filing fee. Murphy paid the filing fee on May 29, 2025, and the district court denied his application as moot.

Because service of process was delayed while Murphy's IFP application remained pending, the magistrate judge ordered Murphy to serve the defendants by September 4, 2025. Murphy missed that deadline. The magistrate judge accordingly ordered him to "show cause on or before October 8, 2025 why this Court should not dismiss this case without prejudice" because of his failure to effect service. Instead of responding to that order, Murphy filed three motions. The first was an unsigned one-page document seeking a default judgment; the second sought to amend the complaint to add his wife as a co-plaintiff; and the third asked for an extension of time to serve the defendants. The magistrate judge denied the first two motions but granted the third, setting a December 8, 2025 deadline for service and for Murphy to show cause "in writing to explain why he has disobeyed two Court Orders." In the same order, the magistrate judge provided Murphy with extensive instructions about how to execute service and attached Federal Rule of Civil Procedure 4 as an appendix.

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Murphy responded to the second show-cause order on November 17, 2025. He acknowledged that he had missed the court's previous deadlines and asked for an additional sixty-day extension. He did not file proof of service by the December 8 deadline or by the date of his proposed sixty-day extension.

On February 18, 2026, Murphy filed a second motion for default judgment, which the clerk declined to enter "because the record [did] not reflect service of process upon" the defendants. The district judge then dismissed his complaint under Federal Rule of Civil Procedure 4(m) on March 20, 2026, and denied Murphy's motion for reconsideration on April 16, 2026. Murphy timely appealed.

II.

"We review a dismissal for failure to effect service for abuse of discretion." *Epley v. Luong*, No. 23-40038, 2023 WL 8595674, at *2 (5th Cir. Dec. 12, 2023) (citing *Thrasher v. City of Amarillo*, 709 F.3d 509, 511 (5th Cir. 2013)). "The serving party bears the burden of proving good cause for failure to effect timely service." *Thrasher*, 709 F.3d at 511 (citation modified) (quoting *Sys. Signs Supplies v. U.S. Dep't of Just.*, 903 F.2d 1011 (5th Cir. 1990)).

III.

Murphy contends the district court abused its discretion because he showed good cause for failing to effect service. We disagree.

Under Federal Rule of Civil Procedure 4(m), district courts "must dismiss" cases without prejudice if "a defendant is not served within 90 days after the complaint is filed," unless "the plaintiff shows good cause for the failure." District courts enjoy "broad discretion in determining whether to dismiss an action for ineffective service of process." *Epley*, 2023 WL

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8595674, at *2 (quoting *George v. U.S. Dep't of Lab., Occupational Safety & Health Admin.*, 788 F.2d 1115, 1116 (5th Cir. 1986) (per curiam)). Good cause requires “at least as much as would be required to show excusable neglect.” *Thrasher*, 709 F.3d at 511 (quoting *Winters v. Teledyne Movable Offshore, Inc.*, 776 F.2d 1304, 1306 (5th Cir. 1985)). “[S]imple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice.” *Id.* (citation omitted). Instead, “some showing of good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified is normally required.” *Id.* (citation and internal quotation marks omitted).

We see no abuse of discretion in the district court’s determination that Murphy did not show good cause for his failure to serve the defendants. Murphy served neither defendant for almost fifteen months after filing suit. He blew past multiple deadlines and ignored repeated warnings that failure to serve the defendants risked dismissal of his lawsuit. And he failed to abide by even his own suggested sixty-day extension, which itself fell more than a year after he first filed his complaint. As for good cause, Murphy argued that he was still “grieving the recent death of his son.” He also pointed out that he was proceeding *pro se* and lacked legal experience.

In *Thrasher*, we noted that a “litigant’s *pro se* status neither excuses his failure to effect service nor excuses him for lack of knowledge of the Rules of Civil Procedure.” 709 F.3d at 512 (citations omitted). Further, while we have no reason to doubt that Murphy was still grieving his son, Murphy Jr. passed away nearly four years before the district court dismissed this case. Even if Murphy Jr. had passed more recently, grief is not good cause for failing to prosecute one’s own case.

Murphy points out that his claims are likely now outside the statute of limitations, so the district court’s nominally without-prejudice dismissal is

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functionally one with prejudice. “We review such dismissals as we would dismissals with prejudice,” *Coleman v. Sweetin*, 745 F.3d 756, 766 (5th Cir. 2014) (per curiam), and will affirm “only where a clear record of delay or contumacious conduct by the plaintiff exists and a lesser sanction would not better serve the interests of justice.” *Thrasher*, 709 F.3d at 513 (internal quotation mark omitted) (quoting *Millan v. USAA Gen. Indem. Co.*, 546 F.3d 321, 326 (5th Cir. 2008)). “This usually involves ‘at least one of three aggravating factors’: (1) delay caused by the plaintiff himself; (2) prejudice to the defendant; or (3) ‘delay caused by intentional conduct.’” *Epley*, 2023 WL 8595674, at *2 (quoting *Thrasher*, 709 F.3d at 514).

Even under this heightened standard, the record indicates clear delay. Murphy failed to serve either defendant for nearly fifteen months. The district court gave Murphy multiple extensions, each time warning him of the potentially case-ending consequences of failing to effect service. Murphy not only ignored these warnings—he twice moved for default judgment against the defendants he had failed to serve.

“A clear record of delay, however, is not our only consideration.” *Thrasher*, 709 F.3d at 514. An aggravating factor must be present, too. Here, the first factor—“delay caused by the plaintiff himself”—cuts against Murphy. *Id.* (citation omitted). Because he was proceeding *pro se*, Murphy alone was responsible for serving the defendants. That makes this case unlike *Thrasher*, where we noted that “attorney inaction” can excuse a plaintiff’s failure to timely effect service. 709 F.3d at 514 (citation modified).

Nor can we say that a lesser sanction would better serve the interests of justice. The district court here showed greater patience to Murphy than the court in *Thrasher*, where the plaintiff was similarly “given multiple chances to serve” the defendants, the district court issued only one show-cause order when “120 days had expired after suit was filed,” and gave

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the plaintiff only one extension. 709 F.3d at 514. We nonetheless affirmed the dismissal because “the district court’s warning of dismissal and grant of extensions accompanied by generous allotments of time” failed to “influence Thrasher to effect service properly.” *Id.* (citing *Callip v. Harris Cnty. Child Welfare Dep’t*, 757 F.2d 1513, 1519–20 (5th Cir. 1985) (per curiam) (discussing the significance of a district court “providing additional time” before dismissal)). So too here.

Murphy’s last argument is that Rule 4(m) gives district courts a choice: They “must dismiss the action . . . *or* order that service be made within a specified time.” Fed. R. Civ. P. 4(m) (emphasis added); *see also Thompson v. Brown*, 91 F.3d 20, 21 (5th Cir. 1996) (“If good cause does not exist, the court *may*, in its discretion, decide whether to dismiss the case without prejudice or extend time for service.”). The district court, Murphy argues, erred by not choosing the latter option. This is a cramped view of the wide latitude we give district courts to manage the cases before them. It’s true that the court below had the discretion to give Murphy more time. But it doesn’t follow that it abused that discretion by choosing not to.

* * *

We cannot say the district court abused its discretion by dismissing Murphy’s complaint in these circumstances. The district court’s judgment is therefore AFFIRMED.