APPENDIX

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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1995

[Filed August 13, 2019]

KIMBERLY D. COLLINS,

Plaintiff - Appellant,

v.

GWENDOLYN THORNTON, Ph.D.,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, Senior District Judge. (3:18-cv-00210-HEH)

Submitted: June 28, 2019 Decided: August 13, 2019

Before MOTZ and RUSHING, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Richard F. Hawkins, III, THE HAWKINS LAW FIRM, PC, Richmond, Virginia, for Appellant. Mark R. Herring, Attorney General, Cynthia V. Bailey, Deputy Attorney General, Carrie S. Nee, Senior Assistant Attorney General, Toby J. Heytens, Solicitor General, Matthew R. McGuire, Principal Deputy Solicitor General, Michelle S. Kallen, Deputy Solicitor General, Brittany M. Jones, John Marshall Fellow, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia; Ramona L. Taylor, University Legal Counsel, VIRGINIA STATE UNIVERSITY, Petersburg, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kimberly D. Collins appeals from the district court's June 27, 2018, order denying her motion to extend time to serve her 42 U.S.C. § 1983 (2012) complaint on Defendant and dismissing it without prejudice under Fed. R. Civ. P. 4(m) for untimely service and its July 27, 2018, order denying her Fed. R. Civ. P. 59(e) motion to alter or amend that judgment. We affirm.

We review the dismissal of a complaint for failure to timely serve process for abuse of discretion. *Shao v. Link Cargo (Taiwan) Ltd.*, 986 F.2d 700, 708 (4th Cir. 1993) (applying Rule 4(m)'s predecessor, Fed. R. Civ. P. 4(j)). We also review the district court's decision on a motion to alter or amend judgment under Rule 59(e) for abuse of discretion. *Mayfield v. Nat'l Ass'n for Stock*

Car Auto Racing, Inc., 674 F.3d 369, 378 (4th Cir. 2012). "A district court abuses its discretion only where it has acted arbitrarily or irrationally, has failed to consider judicially recognized factors constraining its exercise of discretion, or when it has relied on erroneous factual or legal premises." *L.J. v. Wilbon*, 633 F.3d 297, 304 (4th Cir. 2011) (internal quotation marks, alteration, and ellipsis omitted).

Rule 4(m) requires a plaintiff to serve a defendant within 90 days after her complaint is filed. Fed. R. Civ. P. 4(m). A plaintiff may escape dismissal for failure to timely serve process if she demonstrates "good cause" for the delay or if the district court exercises its discretion to extend the time for service. *Id.* With respect to the June 27 order, Collins argues on appeal that the district court abused its discretion in denying her motion to extend time to complete service for three reasons.

First, Collins argues that her motion to extend was "governed by" Fed. R. Civ. P. 6(b)(1)(A) because it was filed before the expiration of the 90-day service deadline set forth by Rule 4(m) and that the district court reversibly erred in failing to apply what she characterizes as the "liberal, non-rigorous, light, and lenient standard applied to pre-deadline motions for extension filed under Rule 6(b)(1)(A)." As Collins acknowledges, however, and as the record reflects, her motion to extend explicitly sought an extension under Rule 4 and explicitly asserted that "good cause" under this Rule had been established. The motion did not invoke Rule 6. "Absent exceptional circumstances, . . . we do not consider issues raised for the first time on

appeal. Rather, we consider such issues on appeal only when the failure to do so would result in a miscarriage of justice." *Robinson v. Equifax Info. Servs.*, LLC, 560 F.3d 235, 242 (4th Cir. 2009) (internal quotation marks and citation omitted). Collins has not argued that exceptional circumstances are present or that a miscarriage of justice would result if this Court failed to consider her arguments, and we find after review of the record no such circumstances warranting departure from the general rule. We therefore decline to consider these arguments on appeal.

Next, Collins argues that the district court's denial of her motion for extension of time was an abuse of discretion because the court did not "discuss or evaluate" whether she or her counsel had acted in bad faith or whether any prejudice to the defendant existed, reached its conclusion that she had not demonstrated good cause or excusable neglect without providing "any" legal analysis of applicable factors, and erred in concluding she had not established good cause warranting the extension. Although other provisions of the Federal Rules of Civil Procedure expressly instruct a district court to consider whether a party has acted in bad faith or whether granting a particular request will cause prejudice, Rule 4(m) does not so instruct. Rather, the Rule directs that, if the plaintiff shows "good cause" for her failure to serve the complaint in a timely manner, then the district court must "extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m). What constitutes "good cause" for purposes of Rule 4(m) "necessarily is determined on a case-by- case basis within the discretion of the district court." *Scott v. Md. State Dep't of* Labor, 673 F. App'x 299, 306 (4th

Cir. 2016) (No. 15-1617); Nafziger *v. McDermott Int'l, Inc.*, 467 F.3d 514, 521 (6th Cir. 2006) ("Establishing good cause is the responsibility of the party opposing the motion to dismiss . . . and necessitates a demonstration of why service was not made within the time constraints." (internal quotation marks omitted)).

Here, the district court concluded that Collins had failed to demonstrate good cause based on the representation of Collins's counsel in the motion to extend concerning his own course of conduct regarding his compliance with the 90-day service deadline. Collins has not shown that the district court abused its discretion in reaching this conclusion.

Counsel's representations in the motion—the only pleading before the court requesting extension—established that he did not even attempt to complete service or obtain a waiver of service until there were 6 days left in the 90-day service period. Counsel also did not seek an extension of time to effect service until the last day of the 90-day service period. Entirely absent from the motion, however, is any explanation as to why counsel waited approximately two months after issuance of the summons to attempt service and further failed to complete service or obtain a waiver of service within the 90-day period. The district court properly reached its conclusion that no good cause was present by considering and analyzing appropriate factors before it bearing on whether Collins's counsel was diligent in his effort to effect service.

Third, Collins appears to contend that the district court erred in its legal analysis underpinning its good cause determination by not applying a list of eight

factors identified in a district court decision, *Robinson v. G D C, Inc.*, 193 F. Supp. 3d 577 (E.D. Va. 2016), a list of six factors recited in this court's unpublished opinion *Scott v. Md. State Dep't of Labor*, 673 F. App'x 299 (4th Cir. 2016) (No. 15-1617), or both. These cases, we conclude, do not help Collins. Neither decision sets out factors district courts in this Circuit must consider in assessing whether good cause warranting an extension of time for service is present under Rule 4(m). In focusing on the information Collins's counsel presented in the motion to extend regarding his efforts at service, the district court did not abuse its discretion as Collins contends. Further, as there is no evidence the court relied on an erroneous factual or legal determination in denying the motion to extend, an abuse of discretion in this regard has not been established.

Turning to the district court's July 27 order denying Collins's Rule 59(e) motion to alter or amend judgment, such a motion may only be granted "in three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Mayfield*, 674 F.3d at 378 (internal quotation marks omitted). Collins argues that the district court abused its discretion in denying the motion in three respects: first, because no extension of time for service actually was necessary because timely and proper service on Defendant had been made; second, because the court's determination that the record did not establish good cause for an extension was erroneous; and third, because the court gave insufficient weight to the consideration that dismissal

of her complaint without prejudice was, in effect, a dismissal with prejudice because she filed her complaint on the last day of the applicable statute of limitations.

We find no abuse of discretion in the district court's denial of Collins's Rule 59(e) motion. As the district court held, Collins's legal theory that no extension of time for service was necessary failed because she did not show that Defendant's assistant was authorized by appointment or by law to accept service on Defendant's behalf. *See* Fed. R. Civ. P. 4(e)(2)(C).

In addition, Collins's Rule 59(e) argument on good cause merely reiterated facts presented in her motion to extend and relied on both legal arguments and factual circumstances she could have raised in that motion but did not. The same is true with respect to Collins's third contention. Collins could have, but failed to, assert prior to the June 27 order that dismissal of her complaint would have been a harsh and unwarranted outcome in view of the likely bar to future litigation she faced based on the statute of limitations. Because Rule 59(e) motions may not be used "to raise arguments or present evidence that could have been raised prior to the entry of judgment," *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (internal quotation marks omitted); *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) ("Rule 59(e) motions may not be used . . . to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance. . . . The Rule

59(e) motion [also] may not be used to relitigate old matters." (internal quotation marks omitted)), the denial of Collins's motion was not an abuse of discretion.[*]

Accordingly, we affirm the district court's orders. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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[*] We further conclude that Collins's motion did not plausibly suggest or establish the presence of a manifest injustice or a clear error of law in the district court's June 27 denial and dismissal order.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1995
(3:18-cv-00210-HEH)

[Filed August 13, 2019]

KIMBERLY D. COLLINS	)
	)
Plaintiff - Appellant	)
	)
v.	)
	)
GWENDOLYN THORNTON, Ph.D.	)
	)
Defendant - Appellee	)
	)

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Civil Action No. 3:18cv210-HEH

[Filed July 27, 2018]

KIMBERLY D. COLLINS,)
)
Plaintiff,)
)
v.)
)
GWENDOLYN THORNTON, Ph.D.,)
)
Defendant.)

MEMORANDUM ORDER
(Denying Motion to Alter Judgment)

THIS MATTER is before the Court on Plaintiff Kimberly D. Collins's ("Plaintiff") Motion to Alter Judgment, filed on July 25, 2018 (ECF No. 8). For the reasons stated below, the Motion will be DENIED. The matter will remain CLOSED.

On June 27, 2018, the Court denied a motion from Plaintiff for an extension of time to serve Defendant Gwendolyn Thornton, Ph.D. ("Defendant"). (Mem. Order, ECF No. 6.) Because the deadline for service

upon Defendant was June 26, 2018, and because the Court found that service upon Defendant's administrative assistant did not qualify as service upon Defendant herself and no good cause existed to warrant the requested extension, the Court dismissed the action without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (*See id.*) Counsel for Plaintiff now comes before the Court, requesting that it reconsider this dismissal. Primarily, Counsel re-argues that Defendant's administrative assistant was a permissible proxy for service on Defendant, and alternatively that the Court should have granted Plaintiff an extension for service because of either good cause or the probable prejudice to Plaintiff if it does not.

Federal Rule of Civil Procedure 4(m) provides the time limit for service on a defendant. It explicitly states:

> If a defendant is not served within 90 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

After Plaintiff filed suit on March 28, 2018, the Clerk's Office contacted Plaintiff twice with reminders to prepare a summons for service and file it with the Court. Despite this, Plaintiff failed to serve Defendant within the ninety days allotted by Rule 4. Instead,

Counsel for Plaintiff did not even begin to attempt to reach out to Defendant (or, rather, to the individual whom Counsel assumed would be representing Defendant) until six days before the service deadline. Failing in those efforts to obtain a response to his request for waiver of service, on the June 26, 2018 service deadline, Counsel finally hired Courier One to serve Defendant. Courier One apparently went to Defendant's place of work and, finding that Defendant was absent and would not return for a week, left the summons and complaint with Defendant's administrative assistant. After the Court dismissed this case for failing to timely serve Defendant, Courier One filed a Proof of Service indicating that, on June 26, it served the summons on Tracy Williams, "who is designated by law to accept service of process on behalf of [Defendant]." (Proof of Service, ECF No. 7.) The present Motion followed.

Plaintiff now argues that the Court's dismissal of the action "rests on a factually incorrect premise—the notion that service was not timely." (Pl. Mem. Supp. Mot. Alter ("Pl. Mem.") 7, ECF No. 9.) Citing cases from the Seventh Circuit, which, it should be noted, are non-binding upon this Court, Plaintiff argues that "[a] signed return of service constitutes prima facie evidence of valid service." (*Id.* (quoting *Relations, LLC v. Hodges,* 627 F.3d 668, 672 (7th Cir. 2010)).) The problem for Plaintiff is that the Court is not questioning the fact that the process server left the summons with Defendant's administrative assistant. The Court will even accept, for the sake of the discussion, Plaintiffs semantic distinction between Courier One having "left" the summons with

Defendant's administrative assistant and the assistant having "accepted" the summons by taking it from Courier One. (*Id.* at 5.) Where the Court remains unsatisfied is with the *legal* contention that this administrative assistant is in fact Defendant's agent and authorized to accept service for Defendant. Nowhere in Plaintiffs twenty-one page Memorandum in Support of the Motion to Alter Judgment can the Court find any new fact, law, or argument that changes the Court's initial impression that Defendant's administrative assistant was not an agent authorized by law to accept service for Defendant.[1] Accordingly, the Court will not alter its finding that Defendant was not timely served.

Because Defendant was not served within the 90 days required by Rule 4(m), Plaintiff's only hope for avoiding dismissal is an extension of time for service. The text of the Rule quoted above makes clear that if Plaintiff can show good cause, the time for service of process "must" be extended; the advisory committee's notes on Rule 4(m) also indicate that it is within the Court's discretion to grant an extension absent good cause. The Court is not convinced that good cause

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[1] In its previous Memorandum Order, the Court mistakenly referred to "Ms. Taylor" when discussing Defendant's administrative assistant. The administrative assistant was actually not referred to by name in Plaintiff's Motion for Extension of Time; Ms. Taylor is counsel for Defendant's employer, Virginia State University ("VSU"), and had no part in the Courier One interaction. This misnomer does not impact the validity of the Court's analysis, however, as it explicitly stated that it did not find any indicia that the administrative assistant was an agent legally authorized to accept service on behalf of Defendant.

appears on this record. Citing to a district court opinion, which in turn relies on circuit court opinions from outside the Fourth Circuit, Plaintiff would have the Court consider a number of factors in determining "good cause," including:

> (i) the possibility of prejudice to the defendant, (ii) the length of the delay and its impact on the proceedings, (iii) the reason (s) for the delay and whether the delay was within the plaintiff's control, (iv) whether the plaintiff sought an extension before the deadline, (v) the plaintiff's good faith, (vi) the plaintiff's pro se status, (vii) any prejudice to the plaintiff, such as by operation of statutes of limitation that may bar refiling, and (viii) whether time has previously been extended.

(Pl. Mem. 8 (citing *Robinson v. GDC, Inc.,* 193 F. Supp. 3d 577, 580 (E.D. Va. 2016)).) This disregards precedent from the Fourth Circuit itself, however, which places the brunt of the Court's focus in determining good cause on the plaintiff's reasons for not complying, not on the broader ramifications of failing to perfect service within the time set by the Rule. *See Mendez v. Elliot,* 45 F.3d 75, 78-79 (4th Cir. 1995); *Giacomo-Tano v. Levine,* Op. No. 98-2060, 1999 WL 976481, at *2 (4th Cir. Oct. 27, 1999) ("Generally speaking, in determining whether to dismiss the complaint for a violation of Rule 4(m), the primary focus is on the plaintiff's reasons for not complying with the time limit in the first place."); *Scruggs v. Spartanburg Reg'l Med. Ctr.,* Op. No. 98-2364, 1999 WL 957698, at *2 (4th Cir. Oct. 19, 1999) ("Under

Mendez, the district court could grant an extension only for good cause, and plainly Scruggs failed to show good cause for her continued failure to comply with Rule 4's mandates .... ").

As discussed in its previous Memorandum Order, the Court is not persuaded that Plaintiff's reasons for noncompliance with Rule 4(m) constitute good cause. (*See* Mem. Order, ECF No. 6.) The additional facts presented in Plaintiff's Motion to Alter Judgment do not change the Court's analysis. For example, the fact that in 2016, Plaintiff's Counsel emailed Ramona Taylor, counsel for Defendant's employer, a copy of a complaint in a *different action* against Defendant and VSU is completely irrelevant to why Counsel failed to timely serve Defendant in the present suit. Indeed, Counsel's admission that Plaintiff previously filed suit against Defendant and her employer (which was premised on the same facts as this case and subsequently voluntarily dismissed without prejudice, *see* Am. Compl., *Collins v. Virginia State University,* Case No. 3:16cv692 (E.D. Va. 2016)) suggests that Counsel was aware that Plaintiff had little to no time remaining on her statute of limitations clock, and therefore he should have prioritized the diligent prosecution of this case rather than push it to the back of his caseload. The Court is not unsympathetic to the family emergency that arose for Plaintiff's Counsel; however, this does not excuse the eighty-three days prior to that event when Counsel did not attempt to arrange for service.

Plaintiff would have the Court place particular emphasis on the prejudice to Plaintiff that will

potentially result from the dismissal of this action, given that "the statute of limitations here has almost certainly run on [Plaintiff's] current claim against Dr. Thornton .... " (Pl. Mem. 11.) However, binding authority from the Fourth Circuit makes clear that the Rule 4(m) does not in and of itself "give the [plaintiff] a right to refile without the consequence of time defenses, such as the statute of limitations." *Mendez,* 45 F.3d at 78 (4th Cir. 1995) (citing Changes in Federal Summons Service, 96 F.R.D. at 120; *Powell v. Starwalt,* 866 F.2d 964, 966 (7th Cir. 1989) ("without prejudice" does not mean "without consequence")).[2] Counsel's failure to pursue this action diligently during the 90 days allotted by Rule 4(m) is not the Court's fault, and whatever potential prejudice exists as to Plaintiff does not lie at the Court's door.[3]

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[2] Since *Mendez,* Rule 4(m) has been amended to shorten the period for service from 120 days to 90 days. Other than that, there have been no substantive changes to the Rule, and *Mendez* remains the only binding authority on the issue in this Circuit. *See Patterson v. Brown,* 2008 WL 219965, at *14 n.7 (E.D. Va. Jan. 24, 2008) (summarizing changes in the law post-*Mendez* but concluding that the case remains good law); Fed. R. Civ. P. 4(m) advisory committee's note to 2015 amendment.

[3] Plaintiff cites an unpublished Fourth Circuit opinion to suggest that a district court will be reversed if it fails to give "proper consideration to the fact that such a dismissal would effectively dismiss the plaintiff's case *with* prejudice." (Pl. Mem. 11, citing *Jones v. United States,* Op. No. 11-2267 (4th Cir. Apr. 30, 2012) (unpub.)). In *Jones,* the Circuit Court found that the district court "stated only that it found Jones' arguments [against dismissal] unpersuasive and unconvincing[,]" without providing the Court of Appeals with any indicia of the factors it considered in reaching its decision beyond the assumption that the plaintiff would not be

Finally, Plaintiff argues that, "even in the absence of good cause, this Court should have exercised its discretion to extend the time to serve" Defendant. (Pl. Mem. 11.) While it is true that a court has the discretion to grant an extension of time even if there has been no good cause shown, such a decision is purely that: discretionary. *See* Fed. R. Civ. P. 4(m) advisory committee's note to 1993 amendment. The fact that other courts have granted extensions of time "on far less compelling facts than those that exist here," (Pl. Mem. 12), does not require this Court to grant a similar extension in this case. Again, "without prejudice" does not mean "without consequence," *Mendez,* 45 F.3d at 78, and Plaintiff's Counsel's long history of missing

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prejudiced by the dismissal. *Jones,* Op. No. 11-2267 at 2. Because the Fourth Circuit found that this single factor was factually incorrect in the circumstances of the case, it was forced to find that the district court abused its discretion. *Id.* at 3. Aside from being non-binding precedent, *Jones* does not apply here because the Court does recognize—and is not unsympathetic to—the fact that Plaintiff herself may in fact be prejudiced by this dismissal. This does not change the fact, however, that for the reasons discussed in this opinion and in the Court's previous Memorandum Order, the Court finds that Plaintiff has not shown good cause warranting an extension instead of dismissal.

deadlines[4] and setting back the efficient administration of cases in this Court must be brought to an end.

Accordingly, the Court DENIES Plaintiff's Motion to Alter Judgment (ECF No. 8). This case remains CLOSED.

The Clerk is DIRECTED to send a copy of this Memorandum Order to all counsel of record.

It is so ORDERED.

/s/Henry E. Hudson
Henry E. Hudson
Senior United States District Judge

Date: July 27, 2018
Richmond, Virginia

[4] *See, e.g.,* Notice of Removal, *Garnett v. Remedi Seniorcare of Va., LLC, et al.,* ECF No. 1, Case No. 3:17cv128 (E.D. Va. Feb. 9, 2017) (dismissal aff'd *Garnett v. Remedi Seniorcare of Va., LLC,* 892 F.3d 140 (4th Cir. 2018)). Counsel for Plaintiff in the present case also served as the plaintiff's counsel in *Remedi,* and similarly failed to serve a lynchpin defendant in the time period allowed. The Court declines to recite all of the other instances of Counsel's tardy filing or requests for extension.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Civil Action No. 3:18cv210-HEH

[Filed June 27, 2018]

KIMBERLY D. COLLINS,	)
	)
Plaintiff,	)
	)
v.	)
	)
GWENDOLYN THORNTON, Ph.D.,	)
	)
Defendant.	)
	)

MEMORANDUM ORDER
(Denying Motion for Extension & Dismissing Without Prejudice)

THIS MATTER is before the Court on Plaintiff Kimberly D. Collins's Motion to Extend Time to Complete Service on the Defendant, filed on June 26, 2018 (ECF No. 4). For the reasons stated below, the Motion is DENIED and the action is DISMISSED WITHOUT PREJUDICE.

The Complaint in this case was filed on March 28, 2018. Accordingly, Plaintiff had ninety days—i.e., until

June 26, 2018—to complete service. Fed. R. Civ. P. 4(m). Counsel for Plaintiff filed the Motion to Extend Time at 4:31 p.m. on June 26, for all practical purposes the eleventh hour of the workday on the day of his deadline. In his Motion, Plaintiff's counsel represents that did not even attempt to complete service or obtain a waiver thereof until June 20, 2018. Prior to this time, the Clerk's Office had to remind counsel for Plaintiff twice, on March 30 and April 16, to prepare a summons and file it with the Court. Counsel finally submitted a proposed summons on April 17, and the Court issued it on April 18. Plaintiff's counsel gives no explanation as to why he failed to complete—or even attempt—service in the intervening two months since that date. Contrary to the assertion in the Motion to Extend Time, this does not demonstrate excusable neglect, but rather neglect, plain and simple.

Furthermore, to the extent Plaintiff's counsel raises the point, the Court is not satisfied that Defendant's administrative assistant was a properly authorized agent to receive service on Defendant's behalf. Plaintiff has sued Defendant in her individual capacity. Federal Rule of Civil Procedure 4(e) provides that an individual may be served by:

> (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
>
> (2) doing any of the following:

> (A) delivering a copy of the summons and of the complaint to the individual personally;
>
> (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
>
> (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e).

State law, in this case Virginia law, allows for personal service upon the individual, substitute service at the individual's place of abode, or service through publication if either of the two foregoing methods cannot be effected. Va. Code Ann. § 8.01-296. Plaintiff's counsel only apparently attempted to avail himself of the option provided in Federal Rule 4(e)(2)(C): service upon an authorized agent. However, nothing suggests that Defendant's administrative assistant, Ms. Taylor, was in fact an agent of Defendant, let alone an authorized one. She is an employee of VSU, not of Defendant personally, and there is no indication she was authorized by law to accept service on behalf of Defendant. Ms. Taylor's ultimate refusal to accept service on behalf of Defendant also suggests she was not authorized by appointment. Accordingly, the Court finds that Plaintiff's counsel's attempt to serve Defendant at her place of employment did not comply

with Federal Rule 4(e), and the deadline for service has now passed.

Because the Court does not find that the reasons stated in the Motion to Extend Time demonstrate either good cause or excusable neglect, the Motion (ECF No. 4) is hereby DENIED. The Complaint is accordingly DISMISSED WITHOUT PREJUDICE, pursuant to Federal Rule of Civil Procedure 4(m).

The Clerk is DIRECTED to send a copy of this Memorandum Order to all counsel of record.

This case is CLOSED.

It is so ORDERED.

/s/Henry E. Hudson
Henry E. Hudson
Senior United States District Judge

Date: June 27, 2018
Richmond, Virginia

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1995
(3:18-cv-00210-HEH)

[Filed September 16, 2019]

KIMBERLY D. COLLINS	)
	)
Plaintiff - Appellant	)
	)
v.	)
	)
GWENDOLYN THORNTON, Ph.D.	)
	)
Defendant - Appellee	)
	)

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Motz, Judge Rushing, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk