

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
NORTH CAROLINA

Timothy Omar Hankins v. Wells Fargo Bank, et al.

Hankins · No. 7:24-CV-01112-M · Decided January 5, 2026

SUMMARY

The United States District Court for the Eastern District of North Carolina adopts three magistrate judge recommendations and grants motions to dismiss claims against the Town of Garner, Wake County, and the City of Raleigh. The court holds that Plaintiff failed to properly serve the municipalities under Federal Rule of Civil Procedure 4(j)(2) and North Carolina law by serving their attorneys rather than authorized executive officers. The claims against the three municipal defendants are dismissed for insufficient service of process and lack of personal jurisdiction.

CASE DETAILS

COURT	United States District Court for the Eastern District of North Carolina
WRITING FOR THE COURT	Richard Myers
JURISDICTION	United States District Court for the Eastern District of North Carolina
DECIDED	January 5, 2026
DOCKET	7:24-CV-01112-M
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed three magistrate judge Memoranda and Recommendations recommending dismissal of Plaintiff's claims against the Town of Garner, Wake County, and the City of Raleigh for insufficient service of process and lack of personal jurisdiction.
STANDARD OF REVIEW	The court conducts de novo review of portions of a magistrate judge's recommendation to which a specific and timely objection is made. Absent a specific and timely objection, the court reviews for clear error. The court conducted de novo review out of an abundance of caution despite the absence of specific and timely objections to two of the recommendations.
PRECEDENTIAL VALUE	unknown
PARTIES	Timothy Omar Hankins v. Wells Fargo Bank, et al., Town of Garner, Wake County, City of Raleigh

TOPICS

service of process

personal jurisdiction

motions to dismiss

municipal law

civil procedure

PRACTICE AREAS

civil procedure

federal jurisdiction

municipal law

QUESTIONS PRESENTED

1. Whether Plaintiff properly served the Town of Garner, Wake County, and the City of Raleigh under Federal Rule of Civil Procedure 4(j)(2) or applicable North Carolina law.
2. Whether the failure to properly serve the municipal defendants deprived the district court of personal jurisdiction over them.
3. Whether the magistrate judge's recommendations should be adopted after review of Plaintiff's objections.

HOLDINGS

1. Plaintiff failed to properly serve the Town of Garner, Wake County, and the City of Raleigh because he served or attempted to serve their attorneys rather than the municipalities' chief executive officers or another person authorized by Federal Rule of Civil Procedure 4(j)(2) or North Carolina law.
2. The court lacked personal jurisdiction over the Town of Garner, Wake County, and the City of Raleigh because Plaintiff failed to effect proper service of process.
3. The court overruled Plaintiff's objections and adopted in full the rationales and conclusions of the three Memoranda and Recommendations.

KEY QUOTATIONS

“Rule 4(j)(2) of the Federal Rules of Civil Procedure governs service upon municipalities and requires service to be effected by “delivering a copy of the summons and of the complaint to [the municipality’s] chief executive officer” or by serving the municipality in accordance with state law.” (DE 188 at 2; DE 190 at 2; DE 191 at 2)

“Plaintiff failed to properly serve Garner, Wake County, and Raleigh. Accordingly, the court lacks personal jurisdiction over Garner, Wake County, and Raleigh.” (DE 188 at 3; DE 190 at 3; DE 191 at 3)

FACTUAL BACKGROUND

Plaintiff attempted to serve the Town of Garner by certified mail addressed to its attorney, the Town of Raleigh by certified mail addressed to its attorney, and Wake County by certified mail addressed to the county attorney. None of the municipalities was served through its chief executive officer or through a method authorized by North Carolina law. The district court concluded that Plaintiff therefore failed to properly serve Garner, Wake County, and Raleigh.

PROCEDURAL HISTORY

Magistrate Judge Kimberly A. Swank recommended dismissal of the claims against Garner, Wake County, and Raleigh. Plaintiff filed timely objections to the Garner recommendation, but did not file specific and timely objections to the recommendations concerning Wake County and Raleigh after an earlier objection document was stricken. The district court nevertheless conducted de novo review because Plaintiff was proceeding pro se, overruled the objections, adopted the three recommendations in full, and granted the municipal defendants' motions to dismiss.

DISPOSITION

dismissed

CASES CITED

- Mathews v. Weber, 423 U.S. 261, 271 (1976)
- Diamond v. Colonial Life & Accident Insurance Co., 416 F.3d 310, 315 (4th Cir. 2005)

OPINION

Hankins

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

SOUTHERN DIVISION

Case No. 7:24-CV-01112-M

TIMOTHY OMAR HANKINS,

Plaintiff,

V. ORDER

WELLS FARGO BANK, et al., Defendants. This matter comes before the court on three Memoranda and Recommendations (“M&Rs”) issued by United States Magistrate Judge Kimberly A. Swank: the July 31, 2025, M&R recommending the dismissal of Plaintiff's claims against the Town of Garner (“Garner”), DE 188; the August 4, 2025, M&R recommending the dismissal of Plaintiff's claims against Wake County, DE 190; and the August 4, 2025, M&R recommending the dismissal of Plaintiff's claims against the City of Raleigh (“Raleigh”), DE 191. Collectively, these three M&Rs recommend that this court grant the municipal defendants’ motions to dismiss for insufficient service of process and lack of personal jurisdiction. DE 52, 109, & 110. Specifically, Judge Swank found that Plaintiff “attempted to serve [Garner] by certified mail addressed to the [Garner’s] attorney, Terri Jones,” DE 188 at 2, “attempted to serve [Wake] County by certified mail addressed to ‘Scott Warren (County Attorney),’” DE 190 at 2, and “attempted to serve [Raleigh] by certified mail addressed to Karen M. McDonald, [Raleigh’s] Attorney,” DE 191 at 2. However, Rule 4(j)(2) of the Federal Rules of Civil Procedure governs service upon municipalities and requires service to be effected by “delivering a copy of the summons and of the complaint to

[the municipality's] chief executive officer" or by serving the municipality in accordance with state law. Fed. R. Civ. P. 4(j)(2). Under North Carolina law, service upon a municipality may be effected by service upon the mayor, city manager, or city clerk. N.C. Gen. Stat. § 1A-1, Rule 4(5). Thus, Judge Swank concluded that Plaintiff impermissibly attempted to serve all three municipalities through their attorneys, rather than by service of process upon the given municipality's executive officer. Judge Swank recommends dismissing Plaintiff's claims against these three defendants because by "'fail[ing] to demonstrate proper service on the {municipal defendants}, [Plaintiff] has also failed to establish that this court has personal jurisdiction over the [municipal defendants]." DE 188 at 3, 190 at 3, 191 at 3. A magistrate judge's recommendation carries no presumptive weight. The court "may accept, reject, or modify, in whole or in part, the ... recommendation| ... receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1); accord *Mathews v. Weber*, 423 U.S. 261, 271 (1976). The court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." Jd. § 636(b)(1). Absent a specific and timely objection, the court reviews only for "'clear error" and need not give any explanation for adopting the recommendation. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). Plaintiff filed objections to the July 31, 2025, M&R on August 20, 2025, DE 202, and Garner responded on September 2, 2025, DE 207. In Plaintiff's objection, Plaintiff reiterates the thematic nature of his claims and asks that Garner "weave [sic] the right to service." DE 202 at 8. In reply, Garner argues that Plaintiff has, therefore, not "demonstrate[d] proper service," "establish[ed] . . . personal jurisdiction," or "specifically identif[ied] the portions of the [M&R] to which objection is made." DE 207 at 2-3. On August 20, 2025, Plaintiff filed a document that purportedly contained his objections to the August 4, 2025, M&Rs. DE 204. However, because "that document does not identify the M&R against which it lodges objections and is thirty-two pages in length," the court ordered it stricken and allowed Defendant a further opportunity to "file a document containing his objections, which is no longer than ten pages in length, and which specifies the M&R against which his objection(s) are lodged, in compliance with the Local Civil Rules." DE 225 at 2. Plaintiff has not filed any such document regarding the August 4, 2025, M&Rs; instead, Plaintiff filed two documents containing various allegations of Federal Questions. DE 226 & 227. Although Plaintiff has not lodged specific and timely objections, out of an abundance of caution given Plaintiff's pro se status, the court has conducted a de novo review. As explained above, Plaintiff has attempted to serve the three municipal defendants impermissibly through their attorneys rather than executive officers. DE 98-3 at 33 (proof of service on "Terri Jones, Attorney for the Town of Garner"), 35 (proof of service on "Karen Musgrave McDonald-City Attorney for Raleigh, NC"), & 37 (proof of service on "Scott Warren for Wake County"). Plaintiff failed to properly serve Garner, Wake County, and Raleigh. Accordingly, the court lacks personal jurisdiction over Garner, Wake County, and Raleigh. The court overrules Plaintiff's objections and adopts in full the rationales and conclusions of the three M&Rs. DE 188, 190, 191.

The municipal defendants' Motions to Dismiss, DE 52, 109, & 110, are GRANTED. Plaintiff's claims against Garner, Wake County, and Raleigh are thus DISMISSED for insufficient service of process and lack of personal jurisdiction. SO ORDERED this clh _ day of January, 2026.

RICHARD MYERS ih

CHIEF UNITED STATES DISTRICT JUDGE

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