PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1498

EDWARD GELIN; DEBORAH GELIN, as personal representatives of the Estate of Ashleigh Gelin, and for themselves,

Plaintiffs - Appellants,

v.

KYLE SHUMAN, individually and as an agent/employee of Baltimore County, Maryland; JENNIFER SEVIER, individually and as an agent/employee of Baltimore County, Maryland; ROSELOR SAINT FLEUR, individually and as an agent/employee of Baltimore County, Maryland; DIANE BAHR, individually and as an agent/employee of Baltimore County, Maryland; VICTORIA TITUS, individually and as an agent/employee of Baltimore County, Maryland,

Defendants - Appellees

and

JAY R. FISHER, Sheriff of Baltimore County, individually and in his representative capacity; JOHN DOE 1-10; CORRECT CARE SOLUTIONS, LLC; BALTIMORE COUNTY, MARYLAND; JOHN AND JANE DOES 1-8; NICHOLAS QUISGUARD, individually and in his official capacity; MYESHA WHITE, individually and in her official capacity; JOSEPH LUX, individually and in his official capacity; GREGORY LIGHTNER, individually and in his official capacity; CARL LUCKETT, individually and in his official capacity; MICHELLE RAWLINS, individually and in her official capacity; MICHAEL SALISBURY, II, individually and in his official capacity; DEBORAH J. RICHARDSON, Director of Baltimore County Detention Center, individually and as an agent/employee of Baltimore County, Maryland,

Defendants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. George L. Russell, III, District Judge; Albert David Copperthite, Magistrate Judge. (1:16-cv-03694-ADC)

Argued: January 27, 2022 Decided: May 24, 2022

Before NIEMEYER, DIAZ, and QUATTLEBAUM, Circuit Judges.

Affirmed in part, vacated in part, and remanded with instructions by published opinion. Judge Niemeyer wrote the opinion, in which Judge Diaz and Judge Quattlebaum joined.

ARGUED: Lee B. Rauch, FREEMAN RAUCH, LLC, Towson, Maryland, for Appellants. Lauren Elizabeth Marini, ECCLESTON & WOLF, P.C., Hanover, Maryland, for Appellees. **ON BRIEF:** Steven R. Freeman, FREEMAN RAUCH, LLC, Towson, Maryland, for Appellants. Eric M. Rigatuso, ECCLESTON & WOLF, P.C., Hanover, Maryland, for Appellees.

NIEMEYER, Circuit Judge:

The plaintiffs in this civil action served process on several of the defendants roughly a year after filing their complaint, in violation of Federal Rule of Civil Procedure 4(m)'s 90-day time requirement for service. The district court found insufficient the plaintiffs' efforts to establish "good cause" for the delay, and because the court understood that a showing of good cause was a condition for any extension, it dismissed the plaintiffs' claims against these defendants.

On review, we conclude that the record amply supports the district court's ruling that the plaintiffs failed to show good cause for their failure to serve these defendants within the time period provided by Rule 4(m). Nonetheless, we vacate the district court's order of dismissal because we conclude that Rule 4(m) confers discretion on district courts to extend the time period for service even when good cause has not been shown. The case is accordingly remanded for further proceedings consistent with this opinion.

I

Ashleigh Gelin committed suicide on November 14, 2013, while incarcerated at the Baltimore County Detention Center. Nearly three years later, her parents, Deborah and Edward Gelin, commenced this wrongful death action on behalf of themselves and Ashleigh's estate against 14 named defendants, including 5 health care providers who worked at the Detention Center at the time of Ashleigh's death — Kyle Shuman, Roselor Saint Fleur, Victoria Titus, Jennifer Sevier, and Diane Bahr — as well as numerous "John and Jane Does."

The Gelins filed their complaint on November 11, 2016, and the district court clerk issued summonses to them on November 15, 2016, for service on the defendants. Under Federal Rule of Civil Procedure 4(m), the Gelins were required to serve the defendants within 90 days after they filed their complaint — i.e., by February 9, 2017. To effect service, the Gelins hired EGA Process Serving, which, on December 1, 2016, attempted to serve Titus, Sevier, and Bahr at the Detention Center, as directed by the Gelins. EGA Process Serving was informed, however, that those three health care providers no longer worked there, and it was unable to obtain additional contact information for them from the Detention Center. A few days later, EGA Process Serving ran a search for the three defendants but was unable to obtain addresses for them.

On December 4 and again on December 8, 2016, EGA Process Serving returned to the Detention Center and hand-delivered the complaint and summonses for Saint Fleur and Shuman, respectively, to a woman identified as "the Administrator" of the Detention Center. While it believed that it had effectively served those defendants at that time, it later learned that the Administrator was not authorized to accept service for either Shuman or Saint Fleur.

After they had filed their complaint, the Gelins learned that the five health care provider defendants working at the Detention Center on the date of Ashleigh's death were not Baltimore County employees but were employed by Correct Care Solutions, LLC. Accordingly, they filed an amended complaint on February 8, 2017, that added Correct Care as a defendant, and Correct Care was thereafter served with the amended complaint and a summons.

In September 2017, the district court granted Correct Care's motion to dismiss and thereafter scheduled a telephone conference with the remaining parties for September 20, 2017, to discuss the case's status. Prior to the telephone conference, the Gelins learned during communications with Correct Care's counsel that Shuman and Saint Fleur were maintaining that they had not been served and therefore were not parties to the proceeding. Thus, at the September 20 telephone conference, the Gelins' counsel explained their service problems to the court. No attorney, however, participated in the conference on behalf of the five health care provider defendants.

The next day, the district court issued an order "memorializ[ing] the agreements reached during the call." Specifically, it directed the Gelins to "file a consent motion within fifteen days . . . requesting a thirty-day extension of time to serve" Shuman, Saint Fleur, Titus, Sevier, and Bahr "and seeking a reissuance of summonses for those Defendants."

As directed, the Gelins filed what they captioned as a "consent motion" on October 6, 2017, for an extension of time to serve those five defendants. The Gelins noted in the motion that they had "experienced difficulty" in serving Titus, Sevier, and Bahr and that "[d]espite efforts to locate these Defendants, they remain unserved." As for Shuman and Saint Fleur, the Gelins maintained that those two defendants had been served properly in December 2016 when their process server delivered copies of the complaint and a summons for each of them to the Administrator of the Detention Center. Nonetheless, the Gelins also requested a 30-day extension to serve those two defendants as well. The court granted the motion on October 10, 2017, ordering the clerk to reissue summonses for the five health care providers and further ordering that "the time to serve [those] [d]efendants

. . . be extended for 30 days from the issue date [of] the summonses." The Gelins prepared the new summonses, and the district court clerk reissued them on October 25, 2017. Thereafter, EGA Process Serving was able to serve Shuman and Titus on October 28, 2017; Bahr on November 6; and Saint Fleur on November 20. It was unable, however, to serve Sevier.

In November 2017 — a year after the complaint had been filed — the same attorney who had served as counsel for Correct Care entered an appearance for the five health care providers and, on their behalf, filed a motion to dismiss the complaint for insufficient service of process, pursuant to Federal Rule of Civil Procedure 12(b)(5). These defendants requested that the court reconsider its earlier order granting the extensions of time to serve process inasmuch as they were not parties to the action at the time. They also disputed the Gelins' claim that Shuman and Saint Fleur had been timely served in December 2016 by service on the Administrator of the Detention Center, as the Administrator had not been authorized to accept service on their behalf. Finally, they argued that the Gelins were "unable to demonstrate good cause for their failure to [effect service] within the time required by Fed. R. Civ. Proc. 4(m)."

In response, the Gelins argued that they had established good cause entitling them to an extension of time under Rule 4(m), which provides that "if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." With respect to Shuman and Saint Fleur, they emphasized that they had believed that both individuals were properly served with service on the Administrator and that the claimed defect was not brought to their attention until shortly before the September 2017 telephone

conference with the court. As for the three other health care providers, the Gelins maintained that while they "were unable to serve these defendants during the Rule 4(m) period because they were unable to find a good address for [them]," they had nonetheless "acted diligently in their efforts to serve these individual[s]," such that "good cause exist[ed] and this Court's Order granting" them extra time "was proper."

The district court granted the five health care providers' motion to dismiss by order dated August 1, 2018. The court noted that the Gelins did not serve these defendants within the 90-day period required by Rule 4(m) and held that they had not established good cause for their failure to do so. The court explained that the good-cause standard "[g]enerally . . . requires plaintiffs to show that they exercised 'reasonable and diligent efforts to effect service.'" It explained that the Gelins' "mistaken belief" that they had effectively served Shuman and Saint Fleur was "insufficient to demonstrate good cause," as they were the ones responsible for "overlooking Rule 4(e)'s requirements for serving individuals." The court also concluded that the Gelins' difficulty in obtaining addresses for the other three defendants was insufficient because they had only made a single attempt during the Rule 4(m) time period to find the defendants' addresses. After concluding that the Gelins had not demonstrated good cause, the court observed that "[m]ore recent opinions issued by" the Fourth Circuit and the District of Maryland had "concluded that courts do not have discretion to extend the Rule 4(m) deadline absent [a showing of] good cause." Accordingly, it concluded that it was necessary to "vacate its October 10, 2017 Order extending the Rule 4(m) deadline" and dismiss the complaint without prejudice as to the five health care providers.

While the case proceeded thereafter with respect to the remaining defendants, the Gelins filed a motion in March 2019 under Federal Rule of Civil Procedure 60(b) with respect to the court's dismissal of their claims against Shuman, maintaining that that dismissal was a "manifest injustice under Rule 60(b)(6)" because they could not refile a complaint against him given that the statute of limitations had run on their claims. The district court denied the motion.

Pursuant to Federal Rule of Civil Procedure 54(b), the Gelins filed a motion to certify the orders dismissing their claims against the five health care providers as final judgments, and the court granted that motion on April 6, 2021. The issue therefore presented focuses solely on the court's dismissal of the Gelins' claims against the five health care providers for insufficient service of process.

II

In relevant part, Federal Rule of Civil Procedure 4(m) provides:

> If a defendant is not served within 90 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — 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).

In this case, the district court, applying Fourth Circuit and district court precedents, read Rule 4(m) *to require* that a plaintiff show good cause to obtain an extension for serving a defendant. It noted that under those precedents, "courts do not have discretion to extend the Rule 4(m) deadline absent good cause." After considering the Gelins' explanation for

delaying service of process for more than a year as to the health care providers, the court concluded that the explanation was insufficient to show good cause and dismissed their claims against those defendants.

The Gelins contend (1) that the court erred in finding their showing of good cause to be insufficient; and (2) that, in any event, the court erred in failing to recognize that it had discretion to grant the extension even absent a good-cause showing. We consider each argument in turn.

A

In arguing that they established good cause, the Gelins maintain that they reasonably believed that in serving the Administrator of the Detention Center, they effectively served Shuman and Saint Fleur. And with respect to the remaining three health care providers, they point to the fact that their process server ran an unsuccessful search for the health care providers' addresses and that, before filing the complaint, they also had made a Maryland Public Information Act request for documents relating to staffing at the Detention Center that failed to provide them with useful information. Additionally, the Gelins note that because their claims would now be barred by the applicable statute of limitations if they had to commence a new action, they would be fatally prejudiced by dismissal, while the defendants would "face no legally recognized prejudice from an extension."

"Good cause" requires a "showing of diligence on the part of the plaintiffs." *Attkisson v. Holder*, 925 F.3d 606, 627 (4th Cir. 2019). Consistent with that foundational principle, good cause is commonly found to "exist[] when the failure of service is due to

external factors, such as the defendant's intentional evasion of service," but "significant periods of inactivity" and a "fail[ure] to seek extension of time before [the] deadline [has] lapsed" tend to undercut any claim of good cause. *Id.* At bottom, "[w]hile 'good cause' is a flexible standard, diligence provides a touchstone for an appellate court" in its review. *Id.*; *see also* 4B Charles Alan Wright, Arthur R. Miller & Adam N. Steinman, *Federal Practice and Procedure* § 1137 (4th ed. 2015) (explaining that in evaluating good cause under Rule 4(m), "courts have rejected excuses based on . . . ignorance of the rule, the absence of prejudice to the defendant, . . . inadvertence of counsel, or the expenditure of efforts that fall short of real diligence by the serving party").

In this case, the Gelins' efforts to serve Titus, Bahr, and Sevier amounted to a single search for addresses by the process server after the process server discovered that those defendants were no longer working at the Detention Center; they did nothing further within the mandatory 90-day service period. While they note that prior to filing their complaint they had submitted a request for documents pursuant to the Maryland Public Information Act, they failed to explain why such a request would be expected to provide contact information for Detention Center personnel. Moreover, they waited 10 months after their failed attempt at service — until October 6, 2017 — before even seeking an extension of time. With respect to Shuman and Saint Fleur, the Gelins maintain simply that they believed that they had served those defendants by serving the Administrator of the Detention Center, where Shuman and Saint Fleur worked. But they provide no basis to justify why they believed that service on the Administrator would constitute effective service on Shuman and Saint Fleur. Rule 4(e) provides that individuals may be served by

(1) "following state law," (2) "delivering a copy of the summons and of the complaint to the individual personally," (3) "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 (4) "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). While the Gelins apparently relied on option (4), they made no showing that the Administrator of the Detention Center was "authorized by appointment or by law to receive service" on Shuman's or Saint Fleur's behalf. Moreover, they had learned before the 90-day service period had elapsed that Shuman and Saint Fleur were employees of Correct Care, not Baltimore County. In short, their mistaken belief that the service on the Administrator had been adequate was simply unreasonable.

In view of these circumstances, we see no ground upon which to disturb the district court's conclusion that the Gelins failed to establish "good cause" within the meaning of Rule 4(m). We accordingly affirm the district court's holding that the Gelins did not demonstrate good cause for their failure to serve the five health care provider defendants within the 90-day service period provided by Rule 4(m).

B

The Gelins seek to marginalize the effect of the good-cause ruling by arguing that Rule 4(m) gives district courts *discretion* to grant an extension even without a showing of good cause. We agree.

In its first sentence, Rule 4(m) provides, "If a defendant is not served within 90 days after the complaint is filed, the court . . . *must*" do one of two things — "[1] dismiss the

action without prejudice against that defendant *or* [2] order that service be made within a specified time." Fed. R. Civ. P. 4(m) (emphasis added). These two options are authorized in the disjunctive without reference to whether the plaintiff has demonstrated good cause for the failure to serve the defendant. It thus follows from the text that, even without a showing of good cause, the district court *may* "order that service be made within a specified time" rather than dismissing the action and that the choice between the two is left to the district court's discretion. *Id.* Only in its second sentence does Rule 4(m) mention good cause, providing that "if the plaintiff shows good cause for the failure" to serve the defendant within 90 days, then "the court *must* extend the time for service for an appropriate period." *Id*. (emphasis added). Thus, under Rule 4(m), while a district court *must* extend the time for service when a plaintiff shows good cause, such a showing is not *necessary* for the court to grant an extension *in its discretion*. *See id.* advisory committee's note to 1993 amendment (stating that Rule 4(m) "explicitly provides that *the court shall allow* additional time *if there is good cause* for the plaintiff's failure to effect service in the prescribed [time], and authorizes the court to relieve a plaintiff of the consequences of an application of [the] subdivision *even if there is no good cause shown*" (emphasis added)).

In requiring a showing of good cause as a condition for exercising discretion, the district court recognized that "[t]here is a split in authority regarding whether Rule 4(m) gives courts discretion to extend deadlines for service without a showing of good cause," and it followed those decisions that had "concluded that courts do not have discretion to extend the Rule 4(m) deadline absent good cause." The "split in authority" identified by the district court has its roots in our prior decision in *Mendez v. Elliot*, 45 F.3d 75 (4th Cir.

1995), where, relying on cases decided before the Rule's amendment in December 1993, we stated that "Rule 4(m) requires that if the complaint is not served within [the time allowed] after it is filed, the complaint must be dismissed absent a showing of good cause." *Id.* at 78; *see also id.* at 80 ("Rule 4(m) requires that good cause be shown for obtaining an extension"). A year after our decision in *Mendez*, however, the Supreme Court recognized in *Henderson v. United States*, 517 U.S. 654 (1996), that one effect of the "1993 amendments to the Rules" was that "courts ha[d] been accorded discretion to enlarge the [time] period '*even if there is no good cause shown*.'" *Id.* at 662 (emphasis added) (quoting Fed. R. Civ. P. 4 advisory committee's note to 1993 amendment).

In the intervening years, "a debate . . . raged" among the district courts within our circuit as to whether, following *Henderson*, "*Mendez* remains good law." *Robinson v. GDC, Inc.*, 193 F. Supp. 3d 577, 582 (E.D. Va. 2016). We have previously indicated, albeit in an unpublished decision, that the Supreme Court's statement in *Henderson* should control, but we "reserve[d]" resolving the conflict between *Mendez* and *Henderson* "to another day." *Scruggs v. Spartanburg Reg'l Med. Ctr.*, No. 98-2364, 1999 WL 957698, at *2–3 (4th Cir. 1999) (per curiam). Now, however, we bring our jurisprudence on this issue in line with *Henderson* and confirm that the statements in *Mendez* indicating that a plaintiff must establish good cause to obtain an extension of time to serve the defendant are no longer good law. Rather, we hold that under Rule 4(m), a district court possesses discretion to grant the plaintiff an extension of time to serve a defendant with the complaint and summons even absent a showing of good cause by the plaintiff for failing to serve the

defendant during the 90-day period provided by the Rule. And if the plaintiff is able to show good cause for the failure, then the court *must* grant the extension.

We cannot in these circumstances fault the district court for its ruling in conformance with *Mendez*. But in light of our holding now, we find it necessary to vacate the district court's dismissal of the Gelins' claims against the five health care provider defendants and remand to allow the court to consider in the first instance the parties' arguments as to whether the court should exercise its discretion to extend the time for serving those defendants in the circumstances of this case, even though good cause was not shown.

Accordingly, the district court's August 1, 2018 order dismissing the Gelins' claims against Shuman, Saint Fleur, Titus, Sevier, and Bahr is affirmed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

IT IS SO ORDERED.