

13-10400 CHEN V. MAYOR AND CITY COUNCIL

DECISION BELOW: 546 Fed.Appx 187

LOWER COURT CASE NUMBER: 13-1375

QUESTION PRESENTED:

Congress enacted the Federal Rule of Civil Procedure 4(m) of 1993 (See 3b), stating that if defendant is not served within 120 days after the complaint is filed, the court can either dismiss the action or extend the service time, but if the plaintiff shows good cause for the failure, the court *must* extend the time for service. However, the court below has issued directly conflicting judgment about the Rule 4(m)'s mandate.

The question presented is whether the court below erroneously held, in conflict with the Rule 4(m) and the decisions of other circuits, that the court must dismiss the case if defendant is not served within 120 days no matter what is the plaintiff's reason?

Secondly, the question presented is whether a district judge can untimely vacate the already executed order without valid reason? The Court issued an order to extend 60 days for plaintiff to effect service. The Plaintiff completed the service within the extension period. Then the Court vacated the extension order and dismissed the case without new reason. What is the Court's credit? If this judgment is affirmed, -other judges may follow it. Then all previous order or judgments can be vacated in very later stage. Such as, when plaintiff win a jury trial, defendants can asking vacate a previous extension order and dismiss the case. All proceeding will become uncertainty. whether a plaintiff's constitutional right is violated if a district judge ignore the law and violate the rule by his discretion.

LIMITED TO THE FOLLOWING QUESTION: "WHETHER, UNDER FEDERAL RULE OF CIVIL PROCEDURE 4(m), A DISTRICT COURT HAS DISCRETION TO EXTEND THE TIME FOR SERVICE OF PROCESS ABSENT A SHOWING OF GOOD CAUSE, AS THE SECOND, THIRD, FIFTH, SEVENTH, NINTH, TENTH, AND ELEVENTH CIRCUITS HAVE HELD, OR WHETHER THE DISTRICT COURT LACKS SUCH DISCRETION, AS THE FOURTH CIRCUIT HAS HELD?"

CERT. GRANTED 11/7/2014