

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

VIRGINIA THOMAS, ET AL.	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 1:05CV349LG-RHW
	§	
CITY OF GULFPORT, ET AL.	§	
Defendants,	§	

**MEMORANDUM OPINION AND ORDER DENYING
DEFENDANTS' MOTION TO QUASH AND TO DISMISS
AND ALLOWING PLAINTIFFS TO CORRECT DEFECT
IN SERVICE PURSUANT TO FED. R. CIV. P. 4(m)**

THIS MATTER COMES BEFORE THE COURT on the Motion to Quash and to Dismiss filed by the Defendants on March 10, 2006. Plaintiffs tendered a timely response and the Defendants a rebuttal. In addition, the parties filed a surrebuttal and surreply. After consideration of the Motion, the record, the pleadings on file, and the relevant legal authority, the Court finds that the Motion should be denied for the reasons that follow.

Plaintiffs filed the instant complaint on July 21, 2005. Thereafter, summonses were issued. The record reflects that the summonses were returned executed on August 2, 2005. The docket specifically reflects that the summons for the City of Gulfport was accepted by service on City Attorney Harry Hewes on July 21, 2005. The summons named Harry Hewes, in his capacity as the City Attorney.

The Defendants, specially appearing through City Attorney Jeff Bruni, now move to quash service of process under FED. R. CIV. P. 4 and for dismissal pursuant to FED. R. CIV. P. 12(b)(2) on the grounds that Plaintiffs' attempt to serve the City by delivering the summons

and complaint to the City Attorney was insufficient to confer jurisdiction. According to the Plaintiffs' response, process was inadvertently served on Mr. Harry Hewes, the attorney for the City of Gulfport instead of Mayor Brent Warr or the City Clerk. Plaintiffs request that the Court permit them to cure the defect in the service in accord with MISS. R. CIV. P. 4(m).

The Court finds that due to the history of the present case, the Plaintiffs have shown good cause such that they should be permitted additional time to serve the Defendants.

Accordingly,

IT IS ORDERED AND ADJUDGED, that the Motion to Quash and Dismiss pursuant to FED. R. CIV. P. 4 and 12, filed March 10, 2006, [12-1] should be, and is hereby **DENIED**.

IT IS FURTHER ORDERED AND ADJUDGED, that the Plaintiffs are granted ten days from the date of this order in order to cure service upon the Defendants in accord with FED. R. CIV. P. 4.

SO ORDERED AND ADJUDGED this the 23th day of August, 2006.

s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE