

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-11573

Non-Argument Calendar

KELLY L. KALAMAS,

Plaintiff-Appellant,

versus

SECRETARY, U.S. DEPARTMENT OF COMMERCE,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

D.C. Docket No. 8:23-cv-01738-KKM-NHA

Before JORDAN, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

This appeal is about Rule 4 of the Federal Rules of Civil Procedure. Kelly Kalamas filed a complaint against the Secretary of the United States Department of Commerce. The district court dismissed her complaint for failure to perfect service. After careful review, we affirm.

I.

Because Kalamas appeals a procedural issue, we keep this section brief and limited to that issue. She filed her complaint against Gina Raimondo, in her official capacity as the Secretary of the United States Department of Commerce, on August 4, 2023. In such a lawsuit, a plaintiff “must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.” Fed. R. Civ. P. 4(i)(2).

To serve the United States, Kalamas sent two copies of the summons and complaint by certified mail addressed to Washington, D.C.—one to the Attorney General and another to the civil-process clerk of the Attorney General’s Office. To serve the Secretary, she sent a copy of the summons and complaint by registered mail to the Department of Commerce’s General Counsel. Then, in January, Kalamas submitted a motion for default judgment because the Secretary had not appeared to defend the action.

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The district court denied her motion and directed her to comply with Rule 4(i) of the Federal Rules of Civil Procedure to serve the United States. The district court gave her three weeks to correct the procedural defect and then dismissed her case without prejudice.

Following the first dismissal, Kalamas filed a motion to reopen her case. The district court granted this request and directed her to serve “a copy of both the summons and the complaint on the United States Attorney’s Office for the Middle District of Florida.” Kalamas did not serve the United States Attorney for the Middle District. Instead, she attached the same certified mail receipts addressed to the Attorney General and Attorney General Office’s civil-process clerk in Washington, D.C.

The district court again dismissed Kalamas’s claims without prejudice “for failure to prove service, failure to prosecute, and failure to comply with Court orders.” Kalamas filed a second motion to reopen the case. The district court denied her request because she had not notified the United States Attorney’s Office for the Middle District of Florida of the action.

She appeals and argues that the district court misinterpreted Rule 4 of the Federal Rules of Civil Procedure.

II.

We review the district court’s interpretation of the Federal Rules of Civil Procedure *de novo* and a dismissal for failure of improper service for abuse of discretion. *Lepone-Dempsey v. Carroll*

Cnty. Comm'rs, 476 F.3d 1277, 1280 (11th Cir. 2007). We will affirm the dismissal, unless the district court made a clear error of judgment or applied the wrong legal standard. *Richardson v. Johnson*, 598 F.3d 734, 738 (11th Cir. 2010).

III.

Kalamas argues that she properly served the United States by sending the summons and complaint to the civil-process clerk at the Office of the Attorney General, even though she sent nothing to the local United States Attorney's Office. We disagree.

“We give the Federal Rules of Civil Procedure their plain meaning[,]’ and [a]s with a statute, our inquiry is complete if we find the text of the Rule to be clear and unambiguous.” *Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc.*, 498 U.S. 533, 540–41 (1991) (quoting *Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120, 123 (1989)). To serve a United States officer sued in her official capacity, a party must (1) serve the United States and (2) send a copy of the summons and the complaint by registered or certified mail to the officer or employee. Fed. R. Civ. P. 4(i)(2).

Rule 4 requires a plaintiff to go through several steps to serve the United States—two matter here. First, a party must serve the local United States Attorney's Office. A party must: (1) “deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or” (2) “send a copy of each by registered or certified mail to

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the *civil-process clerk at the United States attorney's office*[.]” Fed. Civ. P. 4(i)(1)(A) (emphasis added). Second, the party “must . . . send a copy of [the summons and of the complaint] by registered or certified mail to the Attorney General of the United States at Washington, D.C.[.]” *Id.* at 4(i)(1)(B).

Kalamas begins, and ends, her argument by suggesting that a “plain reading” of Rule 4 permits service on the civil-process clerk of the Attorney General of the United States alone. She is incorrect. “[T]he ‘ordinary use’ of ‘or’ is almost always disjunctive[.]” *Santos v. Healthcare Revenue Recovery Grp., LLC.*, 90 F.4th 1144, 1153 (11th Cir. 2024) (quoting *United States v. Woods*, 571 U.S. 31, 45 (2013)). Kalamas correctly notes that the rule gives a party two options to serve the local United States Attorney, but her approach satisfies neither. The rule says that a party may “send a copy of each . . . to the civil-process clerk at the *United States attorney's office*,” Fed. R. Civ. P. 4(i)(1)(A)(ii) (emphasis added); it does not say “send a copy of each . . . to the civil-process clerk *at the United States Attorney General's Office*.” Generally, we infer “different meanings” from “different language in similar sections[.]” *Iraola & CIA, S.A. v. Kimberly-Clark Corp.*, 232 F.3d 854, 859 (11th Cir. 2000). And here, the rule distinguishes the “United States attorney's office” from the “Attorney General of the United States at Washington, D.C.” Fed. R. Civ. P. 4(i)(1)(A)–(B).

Applying the plain language to the facts, we conclude that Kalamas did not satisfy her burden of establishing proper service. See *Aetna Bus. Credit, Inc. v. Universal Decor & Interior Design, Inc.*,

635 F.2d 434, 435 (5th Cir. 1981). The record establishes that she addressed envelopes of certified mail to the “Attorney General” and “Attorney General’s Office” in Washington D.C. Absent from the record is proof that Kalamas notified the United States Attorney’s Office for the Middle District of Florida. Without evidence establishing that Kalamas notified that office, the district court correctly determined that she failed to serve the United States.

We cannot excuse this defect. To be sure, “we have sometimes excused minor service defects when they have neither prejudiced the defendant nor deprived him of notice[.]” *Fuqua v. Turner*, 996 F.3d 1140, 1156 (11th Cir. 2021). In *Fuqua*, we determined that a failure to “ensure the Attorney General received a copy of the summons and complaint” was not a minor service defect because the party “failed to serve a necessary entity—the United States.” *Id.* By contrast, we have excused a minor service defect where “[t]he only information omitted from the summons was the return date for the responsive pleading.” *Sanderford v. Prudential Ins. Co. of Am.*, 902 F.2d 897, 900 (11th Cir. 1990). As in *Fuqua*, Kalamas’s procedural defect is neither minor nor an “inconsequential detail.” *Fuqua*, 996 F.3d at 1156. “[She] simply failed to ensure the [United States attorney’s office] received a copy of the summons and complaint and therefore failed to serve a necessary entity—the United States.” *Id.*

Kalamas has not established service under the Rules. Because Kalamas did not send a copy of the summons and complaint to the United States Attorney’s Office for the Middle District of

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Florida, the office never received notice of her action. The district court instructed Kalamas to fix this procedural defect, but she declined.

IV.

The district court is **AFFIRMED**.