

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOE L. HUNTER,

Plaintiff,

vs.

Case No. 05-3344-JTM

WICHITA POLICE DEPARTMENT, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on the Motion for Default Judgment filed by pro se plaintiff Joe Hunter. (Dkt. No. 164). Hunter seeks a default judgment against defendant Terence James. James has filed a response arguing that no default exists, since the matter against him has been stayed during his service in the military, (Dkt. No. 71), that the stay has never been modified, and that the plaintiff in no event has ever achieved effective service upon him.

The arguments of defendant James are compelling, but the court finds it need not reach them since in any event the court is without jurisdiction to grant an award of default judgment in favor of the plaintiff, since the plaintiff has independently appealed the action (Dkt. No. 151) and the matter is now before the Court of Appeals.

IT IS ACCORDINGLY ORDERED this 9th day of May, 2007, that the plaintiff's Motion for Default Judgment (Dkt. No. 164) is hereby denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE