

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MADELINE S. EWING,

Plaintiff,

v.

**BRIAN STUDDARD and
TWA RESTAURANT GROUP,**

Defendants.

CIVIL ACTION

No. 08-2024-KHV

ORDER

On April 15, 2008, Magistrate Judge James P. O'Hara ordered plaintiff to show good cause in writing why her case should not be dismissed for lack of prosecution. See Notice And Order To Show Cause (Doc. #20). On May 12, 2008, the Court entered an order dismissing plaintiff's claims without prejudice for lack of prosecution, see Order (Doc. #26), and entered judgment in favor of defendants, see Judgment In A Civil Case (Doc. #27). The order and judgment resulted from a miscommunication between the undersigned and Judge O'Hara. Prior to the Court's order and judgment, Judge O'Hara found that plaintiff had shown good cause why her claims should not be dismissed. See Order (Doc. #22) filed April 23, 2008 at 1. In light of Judge O'Hara's previous ruling, the Court hereby vacates the order and judgment of May 12, 2008. See Fed. R. Civ. P. 60(b)(1) (court may vacate judgment for mistake or inadvertence); see also 11 Charles Alan Wright, Arthur R. Miller and Mary Kay Kane, Federal Practice and Procedure, § 2865 (2d ed. 1995) (in applying Rule 60(b), "court has power to act in the interest of justice in an unusual case in which its attention had been directed to the necessity for relief by means other than a motion").

IT IS THEREFORE ORDERED that the Court's order (Doc. #26) and judgment (Doc. #27) of May 12, 2008 be and hereby are **VACATED**. The parties shall proceed in accordance with

Judge O'Hara's order setting the scheduling conference. See Order (Doc. #22).

Dated this 12th day of May, 2008 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Court