

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

CHARLOTTE K. WHITFIELD,)	
)	
Plaintiff,)	
)	
v.)	No. 08-2085-CM
)	
BRUCE R. CLIPPINGER, et. al.)	
)	
)	
Defendants.)	
)	

ORDER ADOPTING REPORT AND RECOMMENDATION

On August 7, 2009, Magistrate Judge James P. O’Hara issued a Report and Recommendation (Doc. 89). Magistrate Judge O’Hara recommends that this case should be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b). The court gave plaintiff ten days from the date that she was served with a copy of the report and recommendation to file a response. The report and recommendation further indicated that if plaintiff failed to respond, no appellate review would be allowed by any court. Plaintiff failed to file a response.

The court sent a copy of the report and recommendation to plaintiff via regular and certified mail. A certified mail receipt was returned unclaimed, which was documented on CM/ECF on August 27, 2009. A copy of the report and recommendation was also provided to Ernest Ballweg, an attorney appointed in this case to review plaintiff’s former counsel, John Gage’s records pertaining to this case. The court contacted Mr. Ballweg via e-mail regarding his contact with plaintiff. He indicated that his last correspondence with plaintiff occurred on July 7, 2009 when he mailed a letter to plaintiff to the 7018 Albervan Street, Shawnee, Kansas 66126

address. He indicated to the court that he had no reason to believe that plaintiff is no longer residing at that address.

This court also has no reason to believe plaintiff has moved. Although her certified mail was returned to the court unclaimed, the regular mail was not. Further, according to Local Rule 5.1(c), it is the duty of a pro se party to notify the clerk in writing of any change of address. The court has not received a notification from plaintiff of an address change in this case. The court has no reason to believe plaintiff did not receive the report and recommendations via regular mail. Therefore, this court considers the notification by regular mail to plaintiff's last known address to be sufficient pursuant to Local Rule 5.1(c), which states that any notice mailed to the last address of record of a party appearing pro se shall be sufficient notice.

The court has reviewed the Report and Recommendation filed by Magistrate Judge O'Hara. Based upon that review and the lack of a response by plaintiff, the court adopts the Report and Recommendation and orders this case to be dismissed with prejudice.

IT IS SO ORDERED.

Dated this 2nd day of September, 2009, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge