

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

LIGIA WILSON,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	No. 09-2667-KHV
COUNTRYWIDE HOME LOANS, INC., et al.,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

On May 6, 2010, defendants filed their motion to quash service of process. On June 28, 2010, Magistrate Judge David J. Waxse sustained defendants' motion in part. See Memorandum And Order (Doc. #15). As to BAC Home Loans Servicing, L.P., South & Associates, P.C., Donald Ash, Brian Hazel and Nancy W. Wilson, Judge Waxse held that service was ineffective but granted plaintiff until July 19, 2010 to re-serve defendants. See id. at 6-14. As to Countrywide Home Loans, Inc., Andrew Gissinger, III and Preston R. James, Judge Waxse noted that the record did not reflect any attempted service of process and directed plaintiff to show cause why the Court should not dismiss the complaint as to these defendants. See id. at 5-6, 15. This matter is before the Court on plaintiff's Respond [sic] To Order To Show Cause (Doc. #16), which the Court construes as a motion for an extension of time to respond to the show cause order, and plaintiff's Objection To Motion To Quash (Doc. #17), both filed July 19, 2010.

I. Response To Order To Show Cause (Doc. #16)

Liberally construed, plaintiff's response seeks (1) an extension of time to re-serve BAC Home Loans Servicing, L.P., South & Associates, P.C., Donald Ash, Brian Hazel and Nancy W. Wilson; and (2) an extension of time to show cause why she did not serve Countrywide Home

Loans, Inc., Andrew Gissinger, III or Preston R. James within 120 days of the filing of the complaint and why the action should not be dismissed without prejudice as to these defendants.¹ For good cause shown, the Court extends such deadlines to September 7, 2010.

II. Objection To Motion To Quash (Doc. #17)

On May 6, 2010, defendants filed their motion to quash service of process. See Defendants' Motion To Quash Service Of Process With Suggestions In Support (Doc. #14). On June 28, 2010, Judge Waxse sustained defendants' motion in part. See Memorandum And Order (Doc. #15). Plaintiff's objection, which was filed some 60 days after the deadline set forth in D. Kan. Rule 6.1(d)(1) and 21 days after a ruling on the motion, is untimely. In any event, plaintiff does not explain how she properly served any of the defendants or how the magistrate judge erred in any respect in ruling on defendants' motion. The Court therefore overrules plaintiff's objection to defendants' motion to quash.

IT IS THEREFORE ORDERED that plaintiff's Respond [sic] To Order To Show Cause (Doc. #16) filed July 19, 2010, which the Court construes as a motion for an extension of time to respond to the order to show cause, be and hereby is **SUSTAINED**.

IT IS FURTHER ORDERED that on or before **September 7, 2010**, plaintiff shall re-serve BAC Home Loans Servicing, L.P., South & Associates, P.C., Donald Ash, Brian Hazel and Nancy W. Wilson in compliance with Rule 4 of the Federal Rules of Civil Procedure.

¹ Judge Waxse ordered that plaintiff show cause why her claims should not be dismissed with prejudice for failure to comply with Rule 4(m). See Memorandum And Order (Doc. #15) at 6, 15. Rule 4(m), however, requires that dismissal for failure to timely serve a defendant is without prejudice. See Fed. R. Civ. P. 4(m); see also Bowling v. Hasbro, Inc., 403 F.3d 1373, 1376 (Fed. Cir. 2005) (dismissal with prejudice could not be based on Rule 4(m)); Bann v. Ingram Micro, Inc., 108 F.3d 625, 626 (5th Cir. 1997) (dismissal with prejudice can never be based on Rule 4(m)'s 120-day requirement). The Court therefore modifies that portion of the magistrate's order.

IT IS FURTHER ORDERED that on or before **September 7, 2010**, plaintiff shall show cause why she did not serve Countrywide Home Loans, Inc., Andrew Gissinger, III and Preston R. James within 120 days of the filing of the complaint and why this action should not be dismissed without prejudice as to these defendants.

IT IS FURTHER ORDERED that plaintiff's Objection To Motion To Quash (Doc. #17) filed July 19, 2010 be and hereby is **OVERRULED**.

Dated this 27th day of August, 2010 at Kansas City, Kansas.

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