

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

TONY COX,

Plaintiff,

v.

DANNY M. GURBA, et al.,

Defendants.

Case No. 13-2211-CM

MEMORANDUM AND ORDER

Plaintiff Tony Cox filed a pro se complaint in this action on May 7, 2013. The complaint alleges that this case is a timely re-filing of Case No. 11-2680-JTM, which was dismissed without prejudice on November 8, 2012. Plaintiff paid the filing fee in the instant case, but then took no other action in the case. On September 10, 2013, Judge O’Hara issued an order to show cause why the case should not be dismissed for lack of prosecution under Fed. R. Civ. P. 4(m). Plaintiff’s response was due by September 25, 2013. Plaintiff did not timely respond, although the record contains a return receipt for certified mail indicating that he received the court’s show cause order.

Plaintiff has not communicated to the court any reason for the failure to effect service. Further, there is no evidence that plaintiff has, in fact, effected service. Under such circumstances, pursuant to Fed. R. Civ. P. 4(m), “the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” This court therefore dismisses the case without prejudice against plaintiff Tony Cox for failure to timely effect service. This dismissal does not impact the requirements previously instituted by Judge Marten in Case No. 11-2680, Doc. 47.

IT IS THEREFORE ORDERED that the case is dismissed without prejudice for failure to effect service.

Dated this 25th day of November, 2013, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge