

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

PAT SMITH,

Plaintiff,

v.

DOAK P. DOOLITTLE, M.D.

Defendant.

Case No. 13-4018-CM

MEMORANDUM AND ORDER

Plaintiff, represented by counsel, filed her complaint on February 25, 2013. The docket sheet indicates that plaintiff has not accomplished service of the summons and complaint on defendant Doak P. Doolittle, M.D. The court has granted plaintiff two extensions of time to effectuate service, giving plaintiff up to February 20, 2014. A week after the deadline passed, Magistrate Judge Teresa J. James issued an order to show cause (Doc. 9) requiring plaintiff to show good cause in writing by March 14, 2014: (1) why she had not yet served defendant and (2) why the court should not dismiss the action in its entirety without prejudice. Further, the order quoted the language of Federal Rule of Civil Procedure 4(m), which allows the court to dismiss a case without prejudice if service of the summons and complaint is not made upon the defendant within 120 days of filing the complaint. (Doc. 9 at 1 (quoting Fed. R. Civ. P. 4(m)).) Plaintiff did not respond to the show cause order.

Plaintiff's case has been on file for over a year, and she has yet to accomplish service on defendant. The court has granted plaintiff multiple extensions of time, but plaintiff has not served defendant within the time allowed by the court. Moreover, the court's show cause order expressly warned plaintiff of the court's authority to dismiss her case for her failure to serve defendant within the

specified time. Plaintiff has had adequate notice of her responsibilities under Rule 4(m) and the court's authority to dismiss her case without prejudice. *Compare Self v. Autoliv, ASP*, 61 F. App'x 583, 584 (10th Cir. 2003) (reversing and remanding the district court's dismissal of the case because the district court failed to first give the plaintiff an opportunity to show cause as required under Rule 4(m) and *Espinoza v. United States*, 52 F.3d 838, 841 (10th Cir. 1995)), with *Scott v. Hern*, 216 F.3d 897, 912 (10th Cir. 2000) (upholding the district court's dismissal of the case based on the court's issuance of an order to show cause). For these reasons, plaintiff's case is dismissed in its entirety without prejudice.

IT IS THEREFORE ORDERED that this case is dismissed in its entirety without prejudice.

Dated this 31st day of March, 2014, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge