

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

ROGER L. WHEELER, and)
JUDITH A. WHEELER,)
Plaintiff,)
)
vs.)
)
CITIBANK, N.A., FAY SERVICING,)
and STATEBRIDGE COMPANY,)
)
Defendants.)

Case No. 14-2524-JAR-TJJ

ORDER OF DISMISSAL

Plaintiffs Roger and Judith Wheeler, proceeding *pro se*, filed this action against Defendants Citibank, N.A., Fay Servicing, and Statebridge Company, in Johnson County, Kansas District Court, alleging seven federal and state law claims surrounding the foreclosure of their home. Defendant Citibank removed the case on October 16, 2014, and then filed a Motion to Dismiss (Doc. 6) on October 24, 2014. The Notice of Removal states that none of the defendants were properly served. On December 9, 2014, after providing Plaintiffs with notice and an opportunity to amend, the Court dismissed the claims against Citibank with prejudice for failure to state a claim upon which relief may be granted.

On March 2, 2015, Magistrate Judge Teresa James entered a Notice and Order to Show Cause on or before March 16, 2015, why this action should not be dismissed for failure to serve the remaining Defendants, Fay Servicing and Statebridge Company, within the 120 days required by Fed. R. Civ. P. 4(m). Plaintiffs responded to this Order to Show Cause on March 16, 2015, claiming that they served the attorney for all three defendants by certified mail. They

attach a return of service for certified mail dated October 2, 2014, pertaining to Citibank only.¹

Even if the Court could conclude that this service was addressed to the other defendants in this matter, which it clearly was not, service upon a party's attorney would not necessarily be sufficient to effect service under Rule 4(h) or Kansas law unless that person is an officer, or some other agent of the business entity.² Because Plaintiffs have failed to show good cause why service was not made on Defendants Statebridge and Fay Servicing, the Court finds that this case must be dismissed without prejudice under Fed. R. Civ. P. 4(m).

IT IS THEREFORE ORDERED BY THE COURT that this case is hereby **dismissed without prejudice** as to Defendants Statebridge and Fay Servicing.

Dated: March 23, 2015

S/ Julie A. Robinson

JULIE A. ROBINSON

UNITED STATES DISTRICT JUDGE

¹Doc. 18, at 2–3.

²Fed. R. Civ. P. 4(h); K.S.A. §§ 60-308(a)(2)(B), 60-303(c), 304(e)–(f).