

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

PATRICIA CONEJO,

Plaintiff,

v.

Case No. 6:17-cv-01022-JTM-GEB

COLEMAN CABLE, LLC,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on a Report and Recommendation (Dkt. 11) by Magistrate Judge Gwynne E. Birzer recommending that the action be dismissed for lack of prosecution under Fed. R. Civ. P. 41(b) and D. Kan. R. 41.1.

The record shows that plaintiff paid the filing fee and filed a *pro se* complaint on January 1, 2017, but she failed to serve the complaint or summons upon the defendant. On May 15, 2017, Judge Birzer ordered plaintiff to show cause why the action should not be dismissed for lack of prosecution. Dkt. 4. Plaintiff responded that she mistakenly believed the court would serve the defendant, and she sought and was granted additional time, until June 26, 2017, to serve the defendant. Dkts. 6, 7, 8. After plaintiff failed to accomplish service by that date, Judge Birzer again ordered her to show cause why the action should not be dismissed. Plaintiff failed to respond to the second show cause order. Judge Birzer then filed a Report recommending dismissal of the action. The Report was sent by certified mail to the address provided by plaintiff but it was

returned unclaimed. Dkt. 12. Plaintiff has not responded or filed objections to the Report and Recommendation.

The record shows plaintiff has failed to prosecute the action and has failed to respond to the Magistrate's orders. Under the circumstances, the court concludes the action should be dismissed. *See* D. Kan. R. 41.1 ("If good cause is not shown within the time prescribed by the show cause order, the court may enter an order of dismissal.").

IT IS THEREFORE ORDERED this 11th day of September, 2017, that the Report and Recommendation (Dkt. 11) of the Magistrate Judge is ADOPTED. The action is hereby DISMISSED WITHOUT PREJUDICE for plaintiff's failure to prosecute and failure to show cause why the action should not be dismissed.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE