

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

BRENDA A. FEARS,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	No. 17-2668-KHV
UNIFIED GOVERNMENT OF)	
WYANDOTTE COUNTY, et al.,)	
)	
Defendants.)	
)	
)	
)	
)	

MEMORANDUM AND ORDER

Brenda A. Fears brings suit pro se against the Unified Government of Wyandotte County, Nancy Burns and ASFME. See Employment Discrimination Complaint (Doc. #1) filed November 22, 2017. On March 16, 2018, the Court ordered plaintiff to show cause in writing why pursuant to Rule 4(m), Fed. R. Civ. P., it should not dismiss without prejudice her claims against ASFME for failure to obtain service within 90 days after filing the complaint. See Notice And Order To Show Cause (Doc. #13). Plaintiff did not respond and on April 11, 2018, the Court dismissed without prejudice the claims against ASFME. See Order (Doc. #14). On April 17, 2018, plaintiff asked the Court to reconsider its order and allow her additional time to respond. See Motion For Reconsideration (Doc. #15). On April 30, 2018, the Court entered an order allowing plaintiff until May 15, 2016 to show cause why she had not filed a return of service or otherwise demonstrated service on ASFME. See Order (Doc. #17) at 1-2. The Court advised that if plaintiff wished to pursue her claims against ASFME, she must also ask the Court to (1) set aside the order dismissing the claims against ASFME and (2) extend the time for her to obtain service on ASFME. See id. at 2.

Following the Court's order, on May 7, 2018, plaintiff filed a form document entitled "Proof of Service." Doc. #19. The document has boxes to check to indicate what type of service was made. See id. at 1. Plaintiff checked the last box, labeled "Other." See id. In that area, plaintiff wrote "Certified Mail" and "Unified Government[,] Nancy Burns, ASFME." Id. Attached to the filing is a U.S. Postal Service ("USPS") certified mail receipt with tracking number 7017 0190 0000 2458 7595. See id. at 2. On the certified mail receipt form, the lines which indicate where the item was sent are left blank. See id. Also attached is a USPS printout for that tracking number which states that "[y]our item has been delivered to the mail room at 8:49 a.m. on December 29, 2017 in Kansas City, KS 66101." Id. at 3.¹

As an initial matter, the "Proof of Service" which plaintiff filed does not demonstrate service on ASFME. Although the record is not clear, it appears that ASFME may be a corporation, partnership or association.² Pursuant to Rule 4(h)(1)(A), Fed. R. Civ. P., plaintiff may serve such an entity by following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located, i.e. Kansas, or where service is made. Fed. R. Civ. P. 4(h)(1)(A); Fed. R. Civ. P. 4(e)(1).³ Kansas law provides that service of process on

¹ Plaintiff also filed a "Proof of Service" which indicates that she served Doug Bach by certified mail. See Doc. #18 filed May 4, 2018 at 1. The record does not reflect who Bach is, where he was served, or how he may be related to the parties in this case.

² In the Notice And Order To Show Cause (Doc. #13), the Court noted that plaintiff may have intended to name "AFSCME" instead of "ASFME." Id. at 2 n.5. The Court stated that it would not change the party name without direction from plaintiff. See id. AFSCME, or American Federation of State, County and Municipal Employees, is a public services employees union. See <https://www.afscme.org/union/about> (last visited June 7, 2018).

³ Under Rule 4(h)(1)(A), plaintiff may also serve a corporation, partnership or association by delivering a copy of the summons and complaint to an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process and if
(continued...)

a corporation, partnership or association must be made by:

- (1) [s]erving an officer, manager, partner or a resident, managing or general agent;
- (2) leaving a copy of the summons and petition or other document at any of its business offices with the person having charge thereof; or
- (3) serving any agent authorized by appointment or by law to receive service of process, and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to defendant.

K.S.A. § 60-304(e). Kansas law further requires that “[s]ervice by return receipt delivery on an officer, partner or agent must be addressed to the person at the person’s usual place of business.”

Id.

Here, plaintiff’s filing does not show that she has satisfied the service of process requirements under federal or Kansas law. In particular, plaintiff has not shown that she served an officer, manager, partner or agent of ASFME, or where any such service was made. See Fed. R. Civ. P. 4(h)(1) and K.S.A. § 60-304(e). Moreover, plaintiff has not asked the Court to set aside the order dismissing the claims against ASFME or extend the time for her to obtain service on ASFME. See Order (Doc. #17) at 2. On this record, the Court will not reconsider its Order (Doc. #14) dismissing without prejudice the claims against ASFME.

IT IS THEREFORE ORDERED that plaintiff’s Motion For Reconsideration (Doc. #15) filed April 17, 2018 is **OVERRULED**.

³(...continued)

the agent is one authorized by statute and the statute so requires, by also mailing a copy of each to the defendant. Fed. R. Civ. P. 4(h)(1)(B). This method of service overlaps with that provided under K.S.A. § 60-304(e)(3), infra.

Dated this 12th day of June, 2018 at Kansas City, Kansas.

s/ Kathryn H. Vratil

Kathryn H. Vratil

United States District Judge