

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KENDRA TYREE,

Plaintiff,

v.

Case No. 18-1292-JWB-GEB

JERRY W. WILLIAMS, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter comes before the court on a Report and Recommendation by United States Magistrate Judge Gwynne E. Birzer. (Doc. 6.) The Report recommends that the action be dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(h)(3) and for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). (*Id.* at 4.) Plaintiff was served with the Report and Recommendation on February 12, 2019 (*see* Doc. 7), but has failed to file any objections within the 14 days permitted by Fed. R. Civ. P. 72(b)(2). For the reasons stated below, the Report and Recommendation is ADOPTED, and the action is DISMISSED for lack of jurisdiction.

As Judge Birzer noted, federal courts are courts of limited jurisdiction. To proceed in federal court, a plaintiff ordinarily must show the existence of either diversity jurisdiction under 28 U.S.C. § 1332 or federal question jurisdiction under 28 U.S.C. § 1331. *Nicodemus v. Union Pac. Corp.*, 318 F.3d 1231, 1235 (10th Cir. 2003). Plaintiff has the burden to establish jurisdiction. *See Montoya v. Chao*, 296 F.3d 952, 955 (10th Cir. 2002) (the burden of establishing subject matter jurisdiction is on the party asserting jurisdiction). For the reasons identified by Judge Birzer, Plaintiff's complaint fails to show any basis for diversity jurisdiction or federal question jurisdiction. As a result, the court must dismiss the action for lack of subject matter jurisdiction.

See Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.”)

IT IS THEREFORE ORDERED this 19th day of March, 2019, that the Report and Recommendation of Judge Birzer (Doc. 6) is ADOPTED, and the action is hereby DISMISSED without prejudice for lack of subject matter jurisdiction.

s/ John W. Broomes
JOHN W. BROOMES
UNITED STATES DISTRICT JUDGE