

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

PAUL GUEBARA,

Plaintiff,

v.

**FINNEY COUNTY SHERIFF'S
DEPARTMENT, et al.,**

Defendants.

Case No. 19-CV-3025-JAR-KGG

ORDER TO SHOW CAUSE

On January 11, 2022, presiding United States Magistrate Judge Kenneth G. Gale granted Plaintiff Paul Guebara, a prisoner proceeding *pro se* and *in forma pauperis*, leave to amend his complaint to add claims against the Finney County Health Department (“FCHD”), Gretchen Dowdy, Hannah Douty, and “Dr. Parks.”¹ Judge Gale directed Plaintiff to prepare and submit summons to the Clerk for service and mailed him blank summons forms to accomplish this.

Summons issued on January 20, 2022, to Douty, Dowdy, FCHD, and fnu Parks at 919 Zerr Road in Garden City, Kansas, by certified mail. Summons was returned executed on February 14, 2022 for all four Defendants. Each of the return receipts was signed by “FICO Health Dept” with the box checked for “Addressee” and not “Agent.” Under “Received by,” are illegible initials and “C19.”²

On February 18, 2018, Plaintiff filed a notice of correction, stating that the proper name of the former FCHD doctor he seeks to add to this lawsuit is Harold Perkins, not Dr. Parks.³

¹ Docs. 93, 96; *see also* Docs. 11, 88, 90.

² Docs. 104, 105,

³ Doc. 102.

Summons issued the same day for Dr. Perkins at a 6th Street address in Garden City. Summons was returned executed for Dr. Perkins on March 12, 2022. It contains illegible initials in the signature line and the notation “C19,” with the box checked for “Addressee.” It states that it was received by “Perkins.”⁴ On April 6, 2022, the Court received this envelope with a “Return to Sender, Attempted-not known, Unable to Forward” sticker attached. There is a note on the front that states the envelope was opened and taped back together before being returned.⁵

Plaintiff has applied for clerk’s entries of default against all four new Defendants on the basis that they have been served but failed to answer or otherwise plead.⁶ Defendant FCHD entered an appearance in order to respond to the motion for default, arguing that it was not properly served, and therefore default should not be entered. FCHD attached an affidavit to its response from Kelly Munyan, the Director of Human Resources for Finney County, Kansas. Munyan states that Finney County was unaware of the lawsuit until March 16, 2022. She reviewed footage from security cameras, and determined that the envelopes containing summons were delivered on February 14, 2022 “in the outside mail receptacle of the Health Department by a US Mail employee, and the documents were not brought inside to our staff, nor was there any request that they be signed for.”⁷ Munyan attests that at the time of delivery, the FCHD had “critically low staffing levels.”⁸ Once the envelopes were retrieved, they “were not given to a person of authority for approximately four weeks,” which was March 16, 2022.⁹ FCHD argues

⁴ Doc. 117.

⁵ Doc. 123.

⁶ *See* Fed. R. Civ. P. 55(a); Docs. 109, 115, 116, 119, 124. The Court urges Plaintiff to refrain from filing further notices and other requests for default judgment until the Court rules on his pending requests, which will not happen until after the response deadline to this Order to Show Cause elapses.

⁷ Doc. 120-1 ¶ 3.

⁸ *Id.* ¶ 4.

⁹ *Id.* ¶¶ 5–6.

in its response to the motion for default that service was not proper because, among other reasons, the certified mail envelopes were not signed for.

The Court issues this Order to Show Cause to the four newly-added Defendants as follows:

1. **FCHD** shall show cause to in writing to the undersigned by **May 9, 2022**, why Plaintiff's requests for clerk's entries of default should not be entered against it, Dowdy, and Douty for their failure to answer or otherwise plead within 21 days of service because the certified mail receipts addressed to all three Defendants were signed, the "Addressee" box was checked, and "C19," indicating an employee, was noted on the return receipts. FCHD shall explain why the return receipts filed with the Court contain signatures that appear to have been completed by a County employee, contrary to Munyan's sworn statements. FCHD shall also state whether it purports to respond on behalf of Dowdy, Douty, or Dr. Perkins.

2. If FCHD does not respond on their behalf, **Dowdy and Douty** shall separately show cause in writing to the undersigned by **May 9, 2022**, why a clerk's entry of default should not be entered for their failure to answer or otherwise plead within 21 days of service.

3. **Dr. Perkins** shall show cause in writing to the undersigned by **May 9, 2022**, why a clerk's entry of default should not be entered for failure to answer or otherwise plead within 21 days of service given that Dr. Perkins' return receipt was signed for on March 12, 2022, and the summons was returned executed despite the envelope being returned later to the Court on April 6, having been clearly opened and taped back together.

IT IS SO ORDERED.

Dated: April 25, 2022

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE