

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

JEFFREY K. BUSBY,

Plaintiff,

v.

CHRISTINE BIESER,

Defendant.

Case No. 22-1242-DDC-BGS

MEMORANDUM AND ORDER

On September 18, 2023, Magistrate Judge Brooks G. Severson issued an Order to Show Cause to plaintiff. Doc. 23. Specifically, Judge Severson ordered plaintiff to show cause, by October 20, 2023, why the court shouldn't dismiss this case, without prejudice, for plaintiff's failure to serve defendant Christine Bieser under Fed. R. Civ. P. 4(m), or for lack of prosecution under Fed. R. Civ. P. 41(b). *Id.* at 2. Plaintiff never has responded to the Order to Show Cause.

So, on October 23, 2023, Judge Severson issued a Report and Recommendation, recommending that the district court dismiss this lawsuit, without prejudice, under Fed. R. Civ. P. 4(m) for failure to serve, or under Fed. R. Civ. P. 41(b) for plaintiff's failure to prosecute. Doc. 24. Judge Severson noted in her Report and Recommendation that plaintiff may serve and file objections to the Report and Recommendation under 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72, and D. Kan. Rule 72.1.4, within 14 days after service of the Report and Recommendation. Doc. 24 at 2. Also, Judge Severson advised plaintiff that failing to make a timely objection to the Report and Recommendation waives any right to appellate review of the proposed findings of fact, conclusions of law, or recommended disposition. *See id.* ("Plaintiff's failure to file such written, specific objections within the fourteen-day period will bar appellate review of the

proposed findings of fact, conclusions of law, and the recommended disposition.”). The Clerk of the Court sent a copy of the Report and Recommendation to plaintiff by certified mail, but it was undeliverable and returned. *See* Doc. 25 (Returned Envelope).

Service of the Report and Recommendation was accomplished by “mailing it to [plaintiff’s] last known address—in which event service [was] completed upon mailing.” Fed. R. Civ. P. 5(b)(2)(C); *ReVoal v. Brownback*, No. 14-4076, 2014 WL 5321093, at *1 (D. Kan. Oct. 16, 2014). “Mailing” occurred on October 23, 2023, when the Clerk mailed the Report and Recommendation to plaintiff. Doc. 25. The 14-day time period for plaintiff to file objections to this Report and Recommendation expired on November 6, 2023. To date, plaintiff has filed no objection to Judge Severson’s Report and Recommendation, nor has he asked to extend the time to file an objection. Because plaintiff has filed no objection to the Report and Recommendation within the time prescribed, and he has sought no extension of time to file an objection, the court can accept, adopt, and affirm the Report and Recommendation in its entirety. *See Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (“In the absence of timely objection, the district court may review a magistrate’s report under any standard it deems appropriate.”).

Also, the court has reviewed the substance of Judge Severson’s Report and Recommendation. And the court agrees with its conclusions: “Plaintiff has not served the remaining Defendant and has failed to respond to the Court’s Order to Show Cause in the time required.” Doc. 24 at 1–2. Thus, the court agrees that plaintiff has failed to serve defendant Bieser and likewise failed to prosecute this case. The court dismisses plaintiff’s lawsuit, without prejudice, for failing to serve defendant under Fed. R. Civ. P. 4(m), and for failing to prosecute under Fed. R. Civ. P. 41(b). The court directs the Clerk to close this case.

IT IS THEREFORE ORDERED THAT, after reviewing the file *de novo*, the Report and Recommendation issued by United States Magistrate Judge Brooks G. Severson on October 23, 2023, (Doc. 24) is **ACCEPTED, ADOPTED, and AFFIRMED**. The court dismisses this action without prejudice under Fed. R. Civ. P. 4(m), for failing to serve defendant, and Fed. R. Civ. P. 41(b), for failing to prosecute.

IT IS SO ORDERED.

Dated this 12th day of January, 2024, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge