

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

CHANELL WALL, Conservator of)
MARQUISE STEVEN WALL; and)
MARQUISE STEVEN WALL,)
)
Plaintiffs,)
)
v.)
)
CYTOSPORT, INC., GAT, and)
CITY OF GATLINBURG, TENNESSEE,)
)
Defendants.)

No. 3:12-CV-561
(Phillips)

MEMORANDUM OPINION

This matter is before the court on the motion of the defendant Cytosport Inc., to dismiss plaintiffs' complaint. Plaintiffs have failed to respond to the motion to dismiss, and pursuant to LR 7.2, their failure to respond will be deemed a waiver of any opposition to the relief sought. Because plaintiffs have failed to obtain service of process on the defendants, Cytosport's motion to dismiss will be granted and this action dismissed.

The record in this case shows that plaintiffs filed their complaint on October 26, 2012, and summons were issued to plaintiff for service upon defendants. On April 4, 2013, defendant Cytosport filed a motion to dismiss the complaint because Cytosport had not been served with process as required by Rule 4. Federal Rules of Civil Procedure. After plaintiffs failed to respond to the motion to dismiss, the court issued an order requiring

plaintiffs to show cause in writing on or before May 31, 2013, why defendant's motion should not be granted and this action dismissed for failure to prosecute. Plaintiffs failed to respond to the court's show cause order.

Rule 4(m) of the Federal Rules of Civil Procedure states:

If a defendant is not served within 120 days after the complaint is filed, the court, on motion or on its own after notice to the plaintiff, must dismiss the action without prejudice against the defendant or order that service be made within a specified time.

Here, plaintiffs have failed to serve the summons and complaint on any defendant within 120 days of filing the complaint; defendant Cytosport has filed a motion to dismiss, which plaintiffs have failed to respond to; and plaintiffs have failed to respond to the court's show cause order, indicating to the undersigned that they have no interest in prosecuting this action.

Accordingly, the court finds the defendant Cytosport's motion to dismiss well taken, and the motion [Doc. 3] is **GRANTED**. This action is hereby **DISMISSED without prejudice, as to all defendants**.

ENTER:

s/ Thomas W. Phillips
United States District Judge