

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

RODNEY COLLINS

PLAINTIFF

v.

CASE NO. 4:08-CV-04228 BSM

MITCH WIDLER

DEFENDANT

ORDER

Defendant's motion to dismiss is denied.

In support of his motion to dismiss, defendant Mitch Wilder asserts that, on November 18, 2008, he filed a complaint against plaintiff Rodney Collins in the Saline County Circuit Court, Case No. CV 2008-1083-2, arising out of the same real estate transaction that at issue in this case. He asserts that, because this case was filed on December 23, 2008, it should be dismissed pursuant to the Federal Rules of Civil Procedure.

In response, Collins agrees that this case was filed on December 23, 2008, but notes that Wilder filed a counterclaim on April 20, 2009. Collins states that he has never been served with process in the Saline County case, and was not aware of the lawsuit. He further states that because more than 120 days have passed since the filing of the Saline County action, the case is not longer pending or active. Ark. R. Civ. P. 4 ("If service of the summons is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed as to that defendant without prejudice upon motion or upon the court's initiative.").

The motion to dismiss is denied because nothing in the record indicates that Collins has been served in the Saline County. This issue may be reconsidered, however, in the event that Wilder presents proper proof and citation to compelling authority. Alternatively, Collins is directed to file notice with the clerk in the event that he obtains an order dismissing the Saline County case.

Accordingly, defendant's motion to dismiss (Doc. No. 6) is denied.

IT IS SO ORDERED THIS 26th day of June, 2009.



UNITED STATES DISTRICT JUDGE