

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DONALD LEE STEPHENS, ET AL.

PLAINTIFFS

v.

CASE NO. 4:09CV00083 BSM

BRISTOL PARK APARTMENTS, ET AL.

DEFENDANTS

ORDER

Defendant Bristol Park Apartments (“Bristol”) moves for dismissal [Doc. No. 2] of plaintiffs’ complaint, asserting that plaintiffs have failed to properly serve it. Bristol contends that plaintiffs served their complaint and summons on Connie Sturm who is not its employee or its agent for service. Indeed, Sturm has submitted an affidavit stating that she is neither Bristol’s employee, nor its authorized agent for service.

Rule 4(h)(1) of the Federal Rules of Civil Procedure provides that service of process on a corporation, partnership or association shall be by delivering a copy of the summons and complaint to an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service or process. Rule 4(h)(1)(A) also provides that service can be effected in a manner prescribed by state law. Rule 4(d)(5) of the Arkansas Rules of Civil Procedure is similar to that of the Federal Rule.

Although service of process was deficient, dismissal is not always required when service is improper. *Haley v. Simmons*, 529 F.2d 78, 79 (8th Cir.1976); *see also* 5B Charles Alan Wright and Arthur R. Miller, *Fed.Prac. & Proc. Civ.2d* § 1354 (3d ed.2009)(court may quash purported service without dismissing action where it appears plaintiff can properly

correct flawed service of process). Here, plaintiffs have already filed an amended complaint and are attempting to properly served Bristol. Therefore, dismissal is not warranted.

Accordingly, the motion to dismiss [Doc. No. 4] is denied as moot.

IT IS SO ORDERED this 8th day of June, 2009.



UNITED STATES DISTRICT JUDGE