

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

WANDA J. SHORTER

PLAINTIFF

vs.

4:09CV00723-WRW

CRACKER BARREL

DEFENDANT

ORDER

Pending is Defendant's Motion for Judgment on the Pleadings; Alternatively, Motion to Dismiss (Doc. No. 33). Defendant's Motion to Dismiss is GRANTED.

Plaintiff filed her Complaint on September 9, 2009.¹ On February 8, 2010, Defendant filed a Motion for Judgment on the Pleadings; Alternatively, Motion to Dismiss, arguing, in part, improper service² A March 12, 2010, Order denied Defendant's Motion without prejudice, and directed Plaintiff to comply with the relevant rules of civil procedure regarding service by Friday, April 2, 2010.³ On April 8, 2010, Defendant filed another Motion for Judgment on the Pleadings; Alternatively, Motion to Dismiss, again arguing improper service.⁴

On May 20, 2009, Plaintiff filed suit against Defendant in another case⁵ – that case was dismissed for improper service. In the Order dismissing the case, the Court explained why service was deficient.⁶

Here, Plaintiff attempted service, making the same mistakes as before. Defendant pointed

¹Doc. No. 1.

² Doc. No. 24.

³Doc. No. 30.

⁴Doc. No. 33.

⁵*Wanda Jean Shorter v. Cracker Barrel*, No. 4:09CV00378-SWW/HDY (E.D. Ark.).

⁶Doc. No. 26, No. 4:09CV00378-SWW/HDY.

out the problems with Plaintiff's attempted service in its first Motion to Dismiss, and a copy of the Order dismissing the earlier case was attached to Defendant's Motion.⁷ The law regarding proper service had been explained in both the earlier Order and Defendant's Motion. Plaintiff was then given ample time to perfect service.

Apparently, though, Plaintiff has not perfected service. According to the general counsel of CBOCS, Inc., the proper defendant here, CBOCS, has not received a summons and complaint in this case.⁸ Accordingly, Defendant's Motion to Dismiss is GRANTED based on improper service. Because the case is being dismissed on improper service, I will not address the other arguments in Defendant's brief. All other pending motions in this case are MOOT.

IT IS SO ORDERED this 12th day of April, 2010.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

⁷Doc. No. 25.

⁸Doc. No. 34.