

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BARBARA BROWN

PLAINTIFF

V.

NO. 2:12-CV-02203

JOHN ATWELL, and
NEW PRIME, INC.

DEFENDANT

ORDER

Before the court is the Defendants Motion to Dismiss (ECF No. 7) filed October 16, 2012 and the Plaintiff's Motion to Quash the Defendant's Motion to Dismiss (ECF No. 8) and Motion for Leave to Proceed In Forma Pauperis (ECF No. 9) filed October 22, 2012. The above matters were referred to the undersigned on October 24, 2012 by text order.

The Plaintiff filed the above case on September 10, 2012 (ECF No. 1). Her Civil Cover Sheet states that she is claiming a cause of action for personal injury and other civil rights violations (ECF No. 2) resulting from an vehicle collision that occurred on August 23, 2005 in Cumberland County, Pennsylvania. (ECF No. 1, ¶2). In examining the complaint filed by the Plaintiff the court cannot ascertain her cause of action or exactly who she is attempting to proceed against but such a determination is not necessary for the resolution of the pending motions.

On October 10, 2012 the Plaintiff filed an Affidavit stating that "the defendant was served with summons and a copy of the complaint by certified mail on 24 September 2012". The attached Return Receipt shows mail to Stuart H. King, 393 S. Glenstone, Springfield, Mo. 6582 02. (ECF No. 4).

On October 16, 2010 Defendant, New Prime, Inc., filed a Motion to Dismiss for Insufficiency of Process and Insufficiency of Process because no summons was included in the complaint sent to Mr. King and that Mr. King is not the registered agent for New Prime, Inc. (ECF No. 7).

A search of the Secretary of State website for the State of Missouri shows the Register Agent for Prime Inc. to be Steve Crawford, 2740 North Mayfair, Springfield, MO 65803.

On October 22, 2012 the Plaintiff appears to have issue a new summons to John Atwell in Mansfield, Ohio (ECF No. 12) and New Prime, Inc., 2740 N. Mayfair Ave, Springfield, Mo. 65803; c/o Steve Crawford, General Counsel. (ECF No. 13). Neither summons is shown to be served at the present time.

The Federal Rules of Civil Procedure provides that if "a defendant is not served within 120 days after the complaint is filed, the court--on motion or its own after notice to the plaintiff-- must dismiss the action without prejudice against that defendant or order that service be made within a specified time. See FRCvP, Rule 4(m).

Since it is not greater than 120 days from the filing of the Plaintiff's complaint the Defendant's Motion to Dismiss (ECF No. 7) is DENIED.

In light of the above ruling the Plaintiff's Motion to Quash the Defendant's Motion to Dismiss (ECF No. 8) is DENIED as MOOT.

The court has verified that at the time she filed her complaint the Plaintiff paid the required filing fee with the clerk's office. (Receipt Number 2010504). In addition the Plaintiff draws Social Security Disability of \$1234 per month and has \$1000 in her checking and savings.

The Plaintiff's Motion to Proceed IFP is DENIED.

Dated this October 24, 2012.

/s/ J. Marschewski

HONORABLE JAMES R. MARSCHEWSKI
CHIEF UNITED STATES MAGISTRATE JUDGE