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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GWENDOLYN G. CARANCHINI,

Plaintiff,

v.

LOLA PECK, et al.,

Defendants.

Case No. 18-2249-CM-TJJ

MEMORANDUM AND ORDER

This matter comes before the court on pro se plaintiff Gwendolyn G. Caranchini's Motion Replying to Magistrate Rushfelt's August 24, 2018 Order Extending The Time for Stephen Phillips' Clients to Respond to Caranchini's Complaint From August 24, 2018 to September 14, 2018 (Doc. 59). On August 24, 2018, Magistrate Judge Gerald L. Rushfelt granted the State Defendants an extension of time until September 14, 2018, to answer or otherwise respond to plaintiff's complaint. Plaintiff filed her motion effectively objecting to Judge Rushfelt's order, claiming Judge Rushfelt was biased against her and in favor of defendants. She also reiterated her desire for Judge Rushfelt to be recused from the case. The State Defendants filed a Motion to Dismiss plaintiff's complaint on September 12, 2018.

Pursuant to our local rules, parties must follow Rule 72(a) of the Federal Rules of Civil Procedure when objecting to a magistrate judge's pretrial, non-dispositive order. *See* D. Kan. Rule 72.1.4(a). Under Rule 72(a), a party may file "objections" to the magistrate judge's order within 14 days of being served with a copy. The district court must then "consider timely objections and modify or set aside" any part of a magistrate judge's order on a non-dispositive pretrial order that is "clearly erroneous or is contrary to law." Rule 72(a). *See also Allen v. Sybase, Inc.*, 468 F.3d 642, 658 (10th Cir. 2006) (finding that a district court must defer to a magistrate judge's ruling on a non-dispositive

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order unless it was clearly erroneous or contrary to law); *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988) (noting that under the clearly erroneous standard, unlike de novo review, the magistrate judge is accorded considerable deference).

The court finds plaintiff has failed to articulate why Judge Rushfelt's order was clearly erroneous or contrary to law beyond her allegation that he is biased against her in favor of defendants and should recuse himself from the case. And in the time since her motion was filed, Judge Rushfelt has retired and this case has been transferred to Magistrate Judge Teresa J. James. The court reviewed Judge Rushfelt's order and does not find it was clearly erroneous or contrary to law. It was within his discretion to extend the deadline for the state defendants to respond to plaintiff's complaint. There is no evidence his decision was motivated by any bias toward any party whatsoever.

IT IS THEREFORE ORDERED that plaintiff's Motion Replying to Magistrate Rushfelt's August 24, 2018 Order Extending The Time for Stephen Phillips' Clients to Respond to Caranchini's Complaint From August 24, 2018 to September 14, 2018 (Doc. 59) is denied.

Dated October 5, 2018, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge