

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

TERA M. BRUNER-McMAHON, as)	
Administrator of the Estate of)	
TERRY ALBERT BRUNER, Deceased,)	
)	CIVIL ACTION
Plaintiff,)	
)	No. 10-1064-KHV
v.)	
)	
COUNTY OF SEDGWICK, et al.,)	
)	
Defendants.)	
)	

MEMORANDUM AND ORDER

This matter is before the Court on Sharon K. Nelson’s Motion To Dismiss Pursuant To Rule 12(b) (Doc. #107) filed October 15, 2010. For reasons stated below, the Court overrules defendant’s motion.

Nelson asks the Court to dismiss all claims against her for insufficiency of service of process under Rule 12(b)(5), Fed. R. Civ. P. Specifically, Nelson argues that plaintiff directed service of process through Kendra Maechtlen, the Health Services Administrator for Conmed, and did not accomplish personal service as directed by Rule 4, Fed. R. Civ. P., or Kansas law. In response, plaintiff maintains that she effectively accomplished service when Nelson entered an appearance without raising an objection to service. Nelson has not filed any reply which attempts to rebut plaintiff’s argument.

On May 14, 2010, counsel entered an appearance on behalf of Nelson. See Entry Of Appearance (Doc. ##15, 16). Nelson first raised the defense of insufficient service of process in her Answer (Doc. #21) which she filed on May 27, 2010. Under Kansas law, “[t]he filing of an entry of appearance has the same effect as service.” K.S.A. § 60-203(c). Accordingly, once counsel formally took such action on Nelson’s behalf before any responsive pleading, Nelson could not

thereafter contest sufficiency of service by answer or motion. See Jenkins v. City of Topeka, 136 F.3d 1274, 1276 (10th Cir. 1998); see also Dotson v. State Highway Comm'n, 198 Kan. 671, 676, 426 P.2d 138, 143 (1967) (defendant's filing of written entry of appearance equivalent to service of process under K.S.A. § 60-203 and defendant thereby submitted himself to court's jurisdiction).

IT IS THEREFORE ORDERED that Sharon K. Nelson's Motion To Dismiss Pursuant To Rule 12(b) (Doc. #107) filed October 15, 2010 be and hereby is **OVERRULED**.

Dated this 8th day of February, 2011 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge