

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

GERALD RAY WEDEL,

Plaintiffs,

vs.

RODGER M. TURBAK et al.,

Defendant.

Case No.10-1148-EFM

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff’s motion for default judgment (Doc. 41). Plaintiff seeks default judgment due to the failure of defendants to file an answer. Federal Rule of Civil Procedure 12(a) requires defendants to serve their answers within 21 days from being served the summons and complaint. However, if instead a defendant chooses to file a motion to dismiss under Rule 12(b), that motion must be filed before a responsive pleading (i.e., an answer) is filed. Pursuant to Rule 12(a)(4) such motion to dismiss alters the time to file a responsive pleading until 14 days after notice of the Court’s disposition of that motion.

Plaintiff claims entitlement to default orders against the defendants for their failure to answer. It is worth noting that, although plaintiff’s motion does not recite the provisions of Rule 12, above, its citation to the language of the summons served on the defendants is consistent: “Within 21 days after service of this summons on you . . . you must serve on the plaintiff an answer

to the attached complaint or a Motion under Rule 12 of the Federal Rules of Civil Procedure.” (emphasis added).

Plaintiff first seeks default against defendant Thomas Sutherland, but that defendant filed a motion to dismiss under Rule 12 (Doc. 7). Likewise, the default plaintiff seeks against defendant Johnson County District Court also is not warranted due to the same motion to dismiss. Plaintiff seeks default against defendant Jennifer Shipman and against defendant Rodger Turbak, but those defendants in fact filed an answer to plaintiff’s complaint (Doc. 19). All motions or answers were timely filed. Therefore, plaintiff’s motion should be denied.

Plaintiff has filed a motion for demand of answer, alleging that he did not receive a copy of Doc. 19. The Court notes that Doc. 19 states that a copy was mailed to him, but since plaintiff alleges he did not receive it the Court will grant this motion, and direct the clerk to mail a copy of the motion to him.

Plaintiff also has pending before this Court a Motion for Emergency Injunction (Doc. 6). This motion does not state what it seeks to enjoin the defendants from doing, nor does it set forth a factual or legal basis for an injunction (containing only summary references to legal and constitutional provisions along with allegations of conflicts of interest, and a lengthy section denying judicial immunity and setting forth a legal basis for judges liability and removal from office), and so should be denied.

Plaintiff has also filed a document entitled “Motion to Claim and Exercise Constitutional Rights and Require the Presiding Judge to Rule upon this Motion and All Public Officers of this Court to Uphold Said Rights” (Doc. 23). This pleading, like plaintiffs’ other pleadings, contains many references to the Constitution, and while it appears to again be addressed to defendants’

failures to answer plaintiffs' complaint it makes no cognizable claim for relief nor any legal or factual grounds requiring a judicial determination. Accordingly, this motion should be struck, and the Court *sua sponte* will so order.

Plaintiff has also filed a Motion to Add Notice of Appeal (Doc. 31). It is unclear what plaintiff seeks to accomplish with this motion. There is no appeal pending in this case, and although the motion also references the notice of removal, this case was in fact not removed from state court, but filed here originally. If plaintiff wishes to amend his complaint, he should file a motion to do so. This motion also makes no cognizable claim for relief nor any legal or factual grounds requiring a judicial determination. Accordingly, this motion should be struck, and the Court *sua sponte* will so order.

IT IS THEREFORE ORDERED that plaintiff's motion for default judgment (Doc. 41) is hereby DENIED.

IT IS FURTHER ORDERED that plaintiff's motion for demand of joint answer (Doc. 42) is granted, and the clerk is directed to mail of copy of the requested document filed at Doc. 19 to plaintiff.

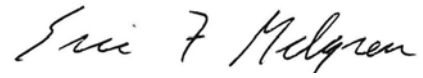
IT IS FURTHER ORDERED that plaintiff's motion for emergency injunction (Doc. 6) is hereby DENIED.

IT IS FURTHER ORDERED that plaintiffs' Motion to Exercise Constitutional Rights (Doc. 23) does not state a cognizable request for judicial relief and is hereby STRUCK.

IT IS FURTHER ORDERED that plaintiff's Motion to Add Notice of Appeal (Doc. 31) does not state a cognizable request for judicial relief and is hereby STRUCK.

IT IS SO ORDERED.

Dated this 10th day of August, 2010, in Wichita, Kansas.

A handwritten signature in cursive script that reads "Eric F. Melgren".

ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE