

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHN ELDRED CUBB,)	
)	
)	
Plaintiff,)	
)	
v.)	No. 4:15 CV 676 JMB
)	
DENISE BELTON,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on the Motion to Dismiss filed by Defendant Denise Belton. (ECF No. 4) The parties consented to the jurisdiction of the undersigned pursuant to 28 U.S.C. § 636(c).

Background

Plaintiff John Eldred Cubb (“Plaintiff”) filed this action *pro se* on April 1, 2015, in the Circuit Court of St. Louis County, asserting domestic violence/stalking acts within the workplace in an Adult Abuse/Stalking Petition for Order of Protection. (Pls.’ Pet., ECF No. 1) On April 24, 2015, Defendant Denise Belton (“Defendant”) filed a Notice of Removal with this Court, thereby removing the action from the Circuit Court of St. Louis County to the United States District Court for the Eastern District of Missouri. In a Motion to Dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure, filed on April 29, 2015, Defendant seeks dismissal asserting a lack of subject matter jurisdiction. (ECF No. 4) A review of the record shows the time for filing a responsive pleading has passed.¹

¹ Local Rule 7- 4.01(B) states that, except for a motion for summary judgment under Fed.R.Civ.P. 56, “each party opposing a motion shall file, within seven (7) days after being served with the motion, a memorandum....” E.D. Mo. L.R. 4.01. Rule 6(a) of the Federal Rules

Accordingly,

IT IS HEREBY ORDERED that Plaintiff shall file a responsive pleading to Defendant's Motion to Dismiss no later than June 16, 2015. Failure to comply with this Order may result in the dismissal of his claims against Defendant in this matter without prejudice.

Dated this 29th day of May, 2015.

~~/s/ John M. Bodenhausen~~ _____
JOHN M. BODENHAUSEN
UNITED STATES MAGISTRATE JUDGE

of Civil Procedure states that, if the period of time to file a response is less than eleven days, the day the motion is filed, weekends, and holidays are not counted. See Fed.R.Civ.P. 6(a)(1)-(2). Finally, the administrative rules governing electronic filing provides for "the addition of three days to the prescribed period both for service by mail and for service by electronic means." E.D. Mo. Administrative Procedures for http://moed.uscourts.gov/CMECF/cmecf_adminprocedures.pdf. The certificate on Belton's motion to dismiss indicates electronic filing on April 29, 2015. Accordingly, Cubb had seven days, excluding the day the motion was filed, weekends, and holidays, plus three additional days to file the response. By the Court's count, Belton's response was due Wednesday, May 13, 2015.