

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

CHESTER BETTS,)	
)	
Plaintiff,)	8:08CV3188
)	
v.)	
)	
CHRISTINE PALERMO, MHR,)	ORDER AND JUDGMENT
LMHP, SARPY COUNTY SHERIFF'S)	
OFFICE, and STATE OF NEBRASKA,)	
)	
Defendants.)	
_____)	

This matter is before the Court on defendant Sarpy County Sheriff's Office's motion to dismiss under Federal Rule of Civil Procedure 4(m) (Filing No. [14](#)), Sarpy County Sheriff's Office's motion to dismiss under Federal Rule of Civil Procedure 12(b) (Filing No. [20](#)), and defendant State of Nebraska's motion to dismiss under Federal Rule of Civil Procedure 4(m) (Filing No. [18](#)). The plaintiff did not file a response to these motions.

Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, a plaintiff must serve a summons and a copy of the complaint on a defendant within 120 days after the complaint is filed. In this case, plaintiff failed to serve Sarpy County Sheriff's Office and the State of Nebraska within the time allowed by Rule 4(m), and plaintiff has not demonstrated good cause or excusable neglect for the failure. Thus, plaintiff's claims against these defendants should be dismissed without prejudice. Sarpy County Sheriff's Office's motion to dismiss

under Federal Rule of Civil Procedure 12(b) will be denied as moot.

In addition, the record reflects that defendant Christine Palermo has not been served. Since more than 120 days have passed since the complaint was filed, the Court will sua sponte dismiss plaintiff's claims against Palermo without prejudice for failure to comply with Rule 4(m). Accordingly,

IT IS ORDERED:

1) Sarpy County Sheriff's Office's motion to dismiss under Federal Rule of Civil Procedure 4(m) (Filing No. [14](#)) is granted.

2) State of Nebraska's motion to dismiss under Federal Rule of Civil Procedure 4(m) (Filing No. [18](#)) is granted.

3) Sarpy County Sheriff's Office's motion to dismiss under Federal Rule of Civil Procedure 12(b) (Filing No. [20](#)) is denied as moot.

4) Plaintiff's action against all defendants is dismissed without prejudice.

DATED this 5th day of May, 2009.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court