

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TACUMA J. MWANZA,)	3:14-cv-00331-MMD-WGC
)	
Plaintiff,)	<u>MINUTES OF THE COURT</u>
vs.)	
)	January 29, 2016
FOSTER, et al.,)	
)	
Defendants.)	
)	

PRESENT: THE HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE

DEPUTY CLERK: KATIE LYNN OGDEN REPORTER: NONE APPEARING

COUNSEL FOR PLAINTIFF(S): NONE APPEARING

COUNSEL FOR DEFENDANT(S): NONE APPEARING

MINUTE ORDER IN CHAMBERS:

Before the court is Plaintiff's Motion for Request for a Joinder of Party. (ECF No. 61.) Plaintiff seeks an order of this court joining L. Bothe as a party to this action "or in the alternative this Defendant be dismissed from the action if it would not prejudice said Plaintiff." (*Id.* at 5.) Defendants have responded. (ECF No. 62.)

L. Bothe is a named defendant in this action. (Amended Complaint, ECF No. 12; Screening Order, ECF No. 18.) The history of Plaintiff's efforts to effect service on Defendant Bothe, who is no longer an employee of the Nevada Department of Corrections (NDOC), include Plaintiff's May 26, 2015 motion seeking issuance and service of a summons (ECF Nos. 30, 31), which the court granted the next day (ECF No. 32). The summons was ultimately returned to the court unexecuted, reflecting Defendant Bothe no longer lived at the address which the Office of the Attorney General had submitted under seal (ECF No. 38).

On October 19, 2015, Plaintiff filed his motion for service by publication which alternatively requested the court rule that NDOC is responsible for the actions of Defendant Bothe (ECF No. 52). The court denied Plaintiff's motion to rule NDOC (a non party to this matter) "responsible." The court further denied the motion for service by publication without prejudice until Plaintiff has received notice of the county of the Defendant Bothe's last known residence. (ECF No. 54.) On November 24, 2015, this court issued an order that Defense counsel provide Defendant Bothe's last known county of residence to Plaintiff to facilitate a potential service by publication. (ECF No. 56.) The order also gave Plaintiff until December 31, 2015, to file a renewed motion for service by publication. (*Id.* at 2.)

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Defendants complied with the court's order on November 30, 2015 (ECF No. 57); however, Plaintiff did not file a renewed motion as authorized. Instead, Plaintiff filed his Motion Requesting Issuance of Summons at Second Address Under Seal. (ECF No. 58.) After inquiring of the U.S. Marshal's Office about the previous attempted service on Bothe, the court learned the Marshal already attempted service (unsuccessfully) at that address. The court denied Plaintiff's motion (ECF No. 59), finding that there would be no utility in issuing a summons to be served at an address where the Marshal had already unsuccessfully attempted service. The court also reminded Plaintiff of the rapidly approaching deadline to file his renewed motion for service by publication. (*Id.*)

On January 15, 2016, the court issued its Rule 4(m) notice regarding the court's intention to dismiss Defendant Bothe without prejudice on February 14, 2016. (ECF No. 60.) On January 25, 2016, Plaintiff filed the instant motion requesting Defendant Bothe be joined as a party to this action. (ECF No. 61.) Because Defendant Bothe is already a named Defendant in this action, the court cannot "join" a party who is already a party to an action.

With regard to Plaintiff's alternative suggestion that "this Defendant be dismissed from the action if it would not prejudice said Plaintiff" (ECF No 61 at 5), the court notes that the Rule 4(m) notice is self executing and the dismissal of Defendant Bothe would be without prejudice and will be effective on February 14, 2016. (ECF No. 60). The court cannot provide Plaintiff any further comment on this subject.

Plaintiff's motion (ECF No. 61) is **DENIED**.

IT IS SO ORDERED.

LANCE S. WILSON, CLERK

By: _____ /s/ _____
Deputy Clerk