

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

VANESSA NOWLIN,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-16-899-D
)	
COMMISSIONER OF SOCIAL)	
SECURITY ADMINISTRATION,)	
)	
Defendant.)	

ORDER

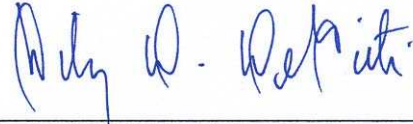
Plaintiff filed the present action for judicial review of Defendant’s final decision that she was not “disabled” under the terms of the Social Security Act. Pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b), the matter was referred to United States Magistrate Judge Suzanne Mitchell for initial proceedings. Judge Mitchell noted Plaintiff had not served her Complaint prior to the expiration of the prescribed deadline under Fed. R. Civ. P. 4, and directed Plaintiff to show cause for her failure to make timely service [Doc. No. 5]. Plaintiff’s counsel requested an additional thirty days to make proof of service, stating the reason for the failure was that “[t]he e-mail address for the notification on this case was turned off and undersigned counsel did not receive the Summons. Said problem has since been corrected.” *See* Doc. No. 6.

On March 20, 2017, Judge Mitchell issued her Report and Recommendation (“R&R” or “Report”). In her Report, Judge Mitchell concluded Plaintiff had not shown good cause for her failure to serve Defendant, and was not entitled to an extension of time. Judge Mitchell noted Plaintiff’s proffered reason implicated the functionality of the Court’s Electronic Case Filing (ECF) System, and upon investigation, she was able to confirm that every Notice of Electronic Filing (NEF) for this case was delivered to Plaintiff’s counsel at the email address he had on file. Accordingly, any problem with notice, she concluded, was on counsel’s end. R&R at 4. In any event, Judge Mitchell further determined, even assuming a malfunction existed in the Court’s ECF System, such fault would not have prevented counsel from logging on to the ECF System to check the status of the case and access any documents, including summonses. *Id.* at 5.

In light of the foregoing, Judge Mitchell recommended that Plaintiff’s application be denied and the action dismissed without prejudice. *Id.* at 7. Judge Mitchell notified Plaintiff of her right to object to the R&R and ordered any objections to be filed on or before April 10, 2017. *Id.* at 7. Judge Mitchell further informed Plaintiff that the failure to timely object would result in the waiver of her right to appellate review of the factual and legal issues contained in the R&R. *Id.* The time for filing objections has passed, and Plaintiff has neither filed an objection nor sought an extension of time to do so. Therefore, the Court **ADOPTS** the R&R

as though fully stated herein. Plaintiff's Application for Extension of Time for Service [Doc. No. 6] is **DENIED** and her action is hereby **DISMISSED**, without prejudice to refiling.

IT IS SO ORDERED this 14th day of April 2017.

A handwritten signature in blue ink, reading "Timothy D. DeGiusti".

TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE