

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

GARY ORVALL GARDNER, SR., *pro se*,  
and ELIZABETH DONLIN, *pro se*,

*Plaintiffs,*

vs.

SANTOS GUERRERO, in his Official  
and Individual Capacities; and  
MCKAYLIE CAMPBELL, in her  
Official and Individual Capacities.

*Defendants.*

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Civil Action No. 2:16-CV-062-J

**MEMORANDUM OPINION AND ORDER**  
**GRANTING DEFENDANT CAMPBELL’S MOTION TO DISMISS**

Before the Court is Defendant McKaylie Campbell’s motion, filed April 19, 2016, to dismiss all claims asserted herein against her pursuant to Rule 12(b)(5) because of the insufficiency of Plaintiffs’ service of process. No response to this motion has been filed, and the time in which Plaintiffs may timely respond has now long expired. For the following reasons, Defendant’s motion is GRANTED.

Plaintiffs attempted to effectuate service on Defendant Campbell by sending a copy of the summons and complaint through certified mail. Pursuant to the Federal Rules of Civil Procedure, only a non-party may serve a summons and complaint. Fed. R. Civ. Pro. 4(c)(2). Therefore, proper service has not been effectuated. Unless a defendant has been served with process in accordance with Fed. R. Civ. P. 4, a federal court lacks personal jurisdiction over that defendant. *See Omni Capital Intern., Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104, 108 S.Ct. 404 (1987); *Delta Steamships Lines, Inc. v. Albano*, 768 F.2d 728, 730 (5th Cir. 1985). Defendant’s motion to


dismiss notified both Plaintiffs of that service deficiency. The record shows that the Plaintiffs did not cure the deficiency by timely effectuating proper service on Defendant, and no party has requested an extension of time to do so. A “defendant’s actual notice of the litigation . . . is insufficient to satisfy Rule 4’s requirements” in the complete absence of proper service. *Way v. Mueller*, 840 F.2d 303, 306 (5th Cir. 1988). Defendant Campbell expressly prays for dismissal without prejudice of her from this case. The Court hereby grants that request.

For all of the above-stated reasons, it is therefore ORDERED that Defendant McKaylie Campbell’s motion to dismiss pursuant to Rule 12(b)(5) is **GRANTED**.

All of the Plaintiffs’ claims and causes of action against Defendant McKaylie Campbell are hereby **DISMISSED WITHOUT PREJUDICE**.

It is **SO ORDERED**.

Signed this the 18<sup>th</sup> day of July, 2016.

  
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**MARY LOU ROBINSON**  
United States District Judge