

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

THEOTIS LEE HODGE,

Plaintiff,

v.

2:22-CV-200-Z-BR

D. ZIMMERMAN, et al.,

Defendants.

**ORDER ADOPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
TO DISMISS UNSERVED DEFENDANT**

Before the Court are the findings, conclusions, and recommendation (“FCR”) of the United States Magistrate Judge to dismiss Defendant Shelia Briscoe without prejudice. ECF No. 36. Objections to the FCR have been filed. *See* ECF No. 47. After making an independent review of the pleadings, files, and objections in this case, the Court concludes that the FCR of the Magistrate Judge is correct, except as to the effect of dismissal. It is therefore **ORDERED** that the FCR of the Magistrate Judge is **ADOPTED IN PART** and this action is **DISMISSED** without prejudice as to Defendant Shelia Briscoe only.¹

IT IS SO ORDERED.

October 31, 2023



MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

¹ The FCR recommended dismissal with prejudice. *See* ECF No. 36 at 2. Federal Rule of Civil Procedure 4(m) provides: “If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the Court . . . shall dismiss the action without prejudice as to that defendant . . .” Generally, dismissal with prejudice for failure to serve should be limited to cases with a “clear record of delay or contumacious conduct.” *Millan v. USAA Gen. Indem. Co.*, 546 F.3d 321, 326 (5th Cir. 2008).