

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Kelsey Lemen v. Andrew A. Woellner

Lemen v. Woellner, No. 26-1039-DDC-GEB (D. Kan. Apr. 15, 2026) · No. 26-1039-DDC-GEB · Decided April 15, 2026

SUMMARY

The United States District Court for the District of Kansas holds that plaintiff Kelsey Lemen did not properly serve defendant Andrew A. Woellner under Kansas law. Rather than dismissing the action, the court quashes service and permits plaintiff to re-serve defendant and file proof of service by May 18, 2026. The court also denies plaintiff’s motions for a preliminary injunction, expedited consideration, and sealing as moot or unwarranted.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	Daniel D. Crabtree
JURISDICTION	United States District Court for the District of Kansas
DECIDED	April 15, 2026
DOCKET	26-1039-DDC-GEB
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's state-court contract action was removed to federal court on diversity grounds. Defendant moved to dismiss under Federal Rule of Civil Procedure 12(b)(5) for insufficient service of process. Plaintiff also moved for a preliminary injunction, expedited consideration, and sealing of a document.
STANDARD OF REVIEW	On a Rule 12(b)(5) motion, the plaintiff bears the burden of making a prima facie showing that service of process was proper. The court evaluated the service challenge using affidavits and other documentary evidence submitted by the parties.
PRECEDENTIAL VALUE	Unknown; district-court memorandum and order with no reporter citation
PARTIES	Kelsey Lemen v. Andrew A. Woellner

TOPICS

service of process

motions to dismiss

personal jurisdiction

injunctions

civil procedure

PRACTICE AREAS

civil procedure

contracts

remedies

QUESTIONS PRESENTED

1. Whether Lemen's pre-removal certified-mail service at Woellner's business UPS mailbox complied with Kansas law governing service on an out-of-state individual.
2. Whether defective but curable service required dismissal under Federal Rule of Civil Procedure 12(b)(5), or instead warranted quashing service and allowing re-service.
3. Whether the court could issue a preliminary injunction against Woellner before he had been properly served.
4. Whether Lemen was entitled to expedited consideration of her preliminary-injunction motion.
5. Whether Lemen's motion to seal should be denied as moot because the document already had been permanently sealed.

HOLDINGS

1. Lemen's certified-mail service was invalid because she mailed process to Woellner's business address without first filing the return of service required for service at an individual's business address after service at the individual's dwelling or usual place of abode is refused or unclaimed.
2. Because the service defect was curable and the time for service had not expired, the court denied the Rule 12(b)(5) motion to dismiss, quashed service, and granted Lemen an opportunity to re-serve Woellner.
3. The court denied Lemen's motion for a preliminary injunction because Woellner had not been properly served and the court therefore lacked personal jurisdiction over him.
4. The court denied Lemen's motions to expedite because docket management is within the court's discretion and the court had addressed the case in the ordinary course.
5. The court denied Lemen's motion to seal as moot because the requested document had already been permanently sealed.

KEY QUOTATIONS

“The general rule is that ‘when a court finds that service is insufficient but curable, it generally should quash the service and give the plaintiff an opportunity to re-serve the defendant.’” (II.B)

“But the court won’t dismiss the case—the remedy defendant prefers for plaintiff’s service inadequacy.” (II.B)

“Because plaintiff hasn’t served defendant properly, the court can’t exercise personal jurisdiction over defendant.” (III)

FACTUAL BACKGROUND

Lemen retained Woellner to represent her in a Kansas state-court lawsuit under a contingency-fee agreement that required Woellner to front litigation expenses. After Lemen hired her husband to perform purported proprietary forensic analyses and sought to charge Woellner nearly \$83,000 for those costs, Woellner refused, and Lemen filed this contract-related action. Before removal, Lemen sent certified mail to Woellner at a Houston UPS mailbox used for his law firm, but the address was not his residence and the recipient lacked authority to accept service for him.

PROCEDURAL HISTORY

Lemen filed the action in Kansas state court, and Woellner removed it to the United States District Court for the District of Kansas. Before removal, Lemen attempted service by certified mail at Woellner's law-firm UPS mailbox; the state court denied her request for permission to serve him by email. The district court held that service was defective, denied dismissal, quashed service, and ordered Lemen to complete service and file proof of service by May 18, 2026. The court also denied the motions for preliminary injunction, expedited consideration, and sealing.

DISPOSITION

other

REMAND INSTRUCTIONS

The court quashed service and ordered Lemen to serve Woellner properly and file proof of service by May 18, 2026. Failure to do so likely will result in dismissal without prejudice under Federal Rule of Civil Procedure 4(m).

CASES CITED

- Haines v. Kerner, 404 U.S. 519, 520 (1972)
- Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)
- Kelley v. City of Atchison, No. 21-CV-02123-JAR-TJJ, 2021 WL 5140320, at *1 (D. Kan. Nov. 4, 2021)
- Oltremari ex rel. McDaniel v. Kan. Soc. & Rehab. Serv., 871 F. Supp. 1331, 1349 (D. Kan. 1994)
- Fisher v. Lynch, 531 F. Supp. 2d 1253, 1260 (D. Kan. 2008)
- Jackson v. Spirit Aerosystems, Inc., No. 21-1210-JWB, 2022 WL 43344, at *1–2 (D. Kan. Jan. 5, 2022)
- Wallace v. Microsoft Corp., 596 F.3d 703, 706–07 (10th Cir. 2010)
- In re Marriage of Welliver, 869 P.2d 653, 658–59 (Kan. 1994)
- Centrinex, LLC v. Darkstar Grp., LTC, No. 12-2300-EFM, 2022 WL 16833759, at *3 (D. Kan. Nov. 9, 2022)
- Wanjiku v. Johnson County, 173 F. Supp. 3d 1217, 1231 (D. Kan. 2016)
- Davis v. U.S. Dep't of Just., No. 23-CV-1010-JAR-KGG, 2023 WL 6312794, at *10 (D. Kan. Sept. 28, 2023)
- Burnham v. Humphrey Hosp. Reit Tr., Inc., 403 F.3d 709, 716 (10th Cir. 2005)
- Spiess v. Meyers, 483 F. Supp. 2d 1082, 1095 (D. Kan. 2007)
- Gregory v. United States/U.S. Bankr. Ct. for Dist. of Colo., 942 F.2d 1498, 1500 (10th Cir. 1991)

- Pell v. Azar Nut Co., 711 F.2d 949, 950 n.2 (10th Cir. 1983)
- Zenith Radio Corp. v. Hazeltine Rsch., Inc., 395 U.S. 100, 111–12 (1969)
- Egbune v. Baum, No. 23-cv-02830-PAB, 2024 WL 1374905, at *2 (D. Colo. Apr. 1, 2024)
- Clark v. State Farm Mut. Auto. Ins. Co., 590 F.3d 1134, 1140 (10th Cir. 2009)

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