

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>TILLMAN NORTH,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	
<b>vs.</b>	:	<b>CIVIL ACTION 07-00354-KD-B</b>
	:	
<b>SCOTT WALDEN,</b>	:	
	:	
<b>Defendant.</b>	:	

**ORDER**

On May 17, 2007, plaintiff filed his complaint pursuant to 42 U.S.C. § 1983 wherein he alleges that defendant Walden used excessive force against him (doc. 1). Subsequent thereto, Magistrate Judge Sonja F. Bivins entered an order on November 24, 2008, wherein plaintiff was ordered to show cause why his complaint should not be dismissed as barred by the two year statute of limitations (doc. 12).<sup>1</sup> Plaintiff was also cautioned that failure to respond within the prescribed time period would result in the dismissal of this action for failure to prosecute and to obey the court's orders. A copy of this order was mailed to plaintiff and was not returned to the court.

After entry of this order, on January 5, 2009, Magistrate Judge Bivins entered a report and recommendation wherein she recommended that plaintiff's complaint be dismissed without prejudice as cautioned in the prior order (doc. 13). A copy of the report and recommendation

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<sup>1</sup> The order also explained that North "has filed seven (7) other actions in this Court"; at least two of which were related to the same incident. See Civil Actions No. 07-0162-WS-C and 07-0657-WS-B. From review of these prior civil actions, Magistrate Judge Bivins ascertained that the alleged incident occurred on or about January 4, 2004. Magistrate Judge Bivins found that Civil Action No. 07-0162-WS-C was dismissed as barred by the two year statute of limitations and Civil Action No. 07-0657-WS-B was dismissed for failure to prosecute and to obey the court's order (doc. 12).

was mailed to the plaintiff at the address he provided but it was returned to the court as undeliverable which indicates that North has failed to provide the court with his current address (doc. 14). The Inmate Locator service of the Alabama Department of Corrections indicates that North is incarcerated at the State Cattle Ranch, 1132 County Rd. 73, Greensboro, Alabama 36744, while the court records indicate that he is incarcerated at Fountain Correctional Facility, Atmore, Alabama.

The record indicates that plaintiff did not file a response to the order to show cause why his complaint should not be dismissed as barred by the statute of limitations. In the order to show cause, plaintiff received notice that his lack of compliance would result in the dismissal of his case. Therefore, because of plaintiff's failure to comply with this court's order and to prosecute this action by failing to provide the court with his current address, and upon consideration of the alternatives which are available to the court, the court finds that plaintiff has abandoned his claims and this action should be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure as no other lesser sanction will suffice. Link v. Wabash Railroad Co., 370 U.S. 626, 630, 82 S.Ct. 1386 (1962) (interpreting Rule 41(b) not to restrict the Court's inherent authority to dismiss sua sponte an action for lack of prosecution); Ballard v. Carlson, 882 F.2d 93 (4<sup>th</sup> Cir. 1989) cert. denied, Ballard v. Volunteers of America, 493 U.S. 1084, 110 S.Ct. 1145 (1990); Mingo v. Sugar Cane Growers Co-op of Florida, 864 F.2d 101 (11th Cir. 1989); Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985); Jones v. Graham, 709 F.2d 1457, 1458 (11th Cir. 1983); Davis v. Jones, C. A. No.90-0658-BH-S (S.D. Alabama June 17, 1993) (dismissal for failure to prosecute), aff'd., 15 F.3d 1096 (11<sup>th</sup> Cir. 1995) (Table Citation).

Accordingly, for the reasons stated herein, this action is **DISMISSED without prejudice** for failure to prosecute and failure to follow this court's orders pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

**DONE** this the 4<sup>th</sup> day of February, 2009.

s / Kristi K. DuBose  
**KRISTI K. DuBOSE**  
**UNITED STATES DISTRICT JUDGE**