IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
BATESVILLE DIVISION

POLLY STRATTON PLAINTIFF
ADC #750283

V. NO: 1:07CV00053 JMM/HDY

JOHN MAPLES, JR. *et al.* DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge James M. Moody. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiff filed this *pro se* complaint, pursuant to 42 U.S.C. § 1983, on November 14, 2007. On June 13, 2008, the Arkansas Department of Correction Defendants[1] filed a motion for summary judgment, a brief in support, and a statement of facts (docket entries #213-#215). Before that motion could be decided, Plaintiff's motion to voluntarily dismiss her complaint was granted (docket entry #231). However, on January 26, 2009, Plaintiff's motion to re-open her case was granted (docket entry #249). On January 30, 2009, Plaintiff was directed to file a response to the pending motion for summary judgment (docket entry #257). Plaintiff filed a response on March 4, 2009 (docket entry #274), but failed to respond to the statement of facts. Accordingly, on March 18, 2009, Plaintiff was directed to file a response to the statement of facts within 11 days (docket entry #277). Although more than 11 days has passed, Plaintiff has not filed a response to the statement of facts,

[1]Larry Norris, Cory Williams, Cindy Courington, Donna Jarrett, Lorelei Sellers, John Maples, Jr., Kenneth DeWitt, Jeffery Deen, Lavonda Dunavion, Maggie Capel, Carolyn Fortune, William Jones, Dexter Payne, Amanda Dutton-Jackson, Judy Taylor, Linda Dixon, Larry May, Robert Parker, and Ray Hobbs.

or otherwise responded to the Court's order. Under these circumstances, the Court concludes that Plaintiff's complaint should be dismissed without prejudice for failure to prosecute. *See Miller v. Benson,* 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE for failure to prosecute.

2. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 7 day of April, 2009.

UNITED STATES MAGISTRATE JUDGE