

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**SEYOUM ALI CLARK
ADC #120783**

PLAINTIFF

v.

NO: 1:16-CV-00083 BSM-PSH

BRADLEY HOWARD ROBERTSON, et al.

DEFENDANTS

ORDER

The proposed findings and recommendations submitted by United States Magistrate Judge J. Thomas Ray [Doc. No. 104] have been reviewed. After careful review of the record, the proposed findings and recommendations are adopted in their entirety. Accordingly, motions for summary judgment [Doc. Nos. 87 & 88] are denied, and defendants' motion for summary judgment [Doc. No. 95] is granted.

Clark filed a motion to dismiss without prejudice after filing his own motions for summary judgment, after Judge Ray's proposed findings and recommendations were submitted, and after the defendants filed a motion for summary judgment. Doc. No. 105. Voluntary dismissal of an action after a motion for summary judgment may be granted only with a court order and on "proper" terms. Fed. R. Civ. P. 41(a)(2). The following are some of the factors considered in determining whether the terms are proper: whether plaintiff has presented a proper explanation for the desire to dismiss; whether defendants have expended considerable effort and expense in preparing for trial; whether plaintiff exhibited diligence in prosecuting the case; and whether defendants filed a motion for summary judgment. *Paulucci v. City of Duluth*, 826 F.2d 780, 782 (8th Cir.1987); *see also Hamm v.*

Rhone-Poulenc Rorer Pharm., Inc., 187 F.3d 941, 950 (8th Cir. 1999) (listing other factors such as judicial waste and prejudice to the defendants). Furthermore, “[a] party may not dismiss simply to avoid an adverse decision or seek a more favorable forum.” *Cahalan v. Rohan*, 423 F.3d 815, 818 (8th Cir. 2005).

Clark’s proffered explanation for seeking dismissal is that he is unable to continue his case while he undergoes mental examinations at the state hospital, pursuant to a state court order. The state court order he submitted with his motion shows, however, that Clark is to report to the state hospital on November 13, 2018. He has provided no evidence to show why he would have been unable to file objections to Judge Ray’s findings and recommendations by October 18, 2018. The record shows the defendants have expended considerable effort and expense over almost two years of litigating this case, including filing a motion for summary judgment. Clark also has prosecuted his case; however, the factors weigh against him. Therefore, Clark’s motion to dismiss is denied. Clark’s amended complaint [Doc. No. 9] is dismissed with prejudice.

IT IS SO ORDERED this 1st day of November 2018.


UNITED STATES DISTRICT JUDGE