

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

JEREMY WAYNE EDGAR

PLAINTIFF

v.

3:08CV00068JLH/HLJ

DAN LANGSTON, et al.

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to Chief United States District Court Judge J. Leon Holmes. 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

On November 19, 2008, this Court issued a Scheduling Order setting a court trial for January 22, 2009 (DE #57). The copy of the Order mailed to plaintiff at his last-known address was returned to Sender on November 25, 2008 (DE #59). On December 10, 2008, this Court issued an Order directing plaintiff to notify the Court of his present address and his intent to continue prosecution of this action within fifteen days of the date of the Order (DE #61). The Court further advised plaintiff that failure to file such in accordance with the Court’s directions would result in the dismissal without prejudice of his complaint.¹ That Order was returned to Sender on December 22, 2008 (DE #68). In the meantime, defendants filed a motion for summary judgment on December 12, 2008. Other items mailed to plaintiff at his last-known address were returned to Sender on December 23, 2008 and January 9, 2009 (DE ##69, 72). As of this date, plaintiff has not responded to any of the Court Orders or to defendants’ motion for summary judgment, and has not corresponded with this Court.

Rule LR5.5(c)(2) of the Rules of the United States District Courts for the Eastern and

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Plaintiff was initially apprised of Local Rule 5.5(c)(2) in this Court’s May 2, 2008 Order granting his motion to proceed in forma pauperis (DE #6).

Western Districts of Arkansas provides as follows:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case and to prosecute or defend the action diligently If any communication from the Court to a pro se plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. . . .

In light of plaintiff's failure to respond to this Court's December 12, 2008 Order, the Court will dismiss the complaint without prejudice. Accordingly,

IT IS, THEREFORE, ORDERED that this complaint is DISMISSED without prejudice.

IT IS FURTHER ORDERED that defendants' motion for summary judgment (DE #63) is hereby DENIED as moot.

IT IS SO ORDERED this 14th day of January, 2009.

Henry L. Jones, Jr.

United States Magistrate Judge