

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

LEE BAKER

PLAINTIFF

v.

5:17CV00012-KGB-JTK

RORY GRIFFIN, et al.

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Kristine G. Baker. 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 fourteen (14) 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 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 Baker filed this pro se 42 U.S.C. § 1983 action while incarcerated at the Cummins Unit of the Arkansas Department of Correction (ADC), and the Court granted his Motion to proceed in forma pauperis on January 19, 2017 (Doc. No. 5). Plaintiff notified the Court of his release from custody on March 30, 2017 (Doc. No. 36).

This matter is before the Court on Defendants' Motion for Sanctions, based on Plaintiff's failure to appear at his August 30, 2017 deposition (Doc. No. 70). Defendants ask the Court to impose on Plaintiff the costs incurred in scheduling his deposition, and to dismiss Plaintiff's Complaint with prejudice. This Court directed Plaintiff to file a Response to the Motion within fifteen days, on September 18, 2017, and notified him that failure to respond could result in the dismissal of this lawsuit, for failure to appear and prosecute (Doc. No. 73). As of this date, Plaintiff has not filed a Response to the Motion.

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

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 addition, FED.R.CIV.P. 37(b)(2)(A)(v) and 37(d)(3) provide that if a party fails to obey an order to provide or permit discovery, or fails to serve answers to interrogatories, the Court may sanction the party by dismissing the action. In this case, in light of Plaintiff's failure to appear at his deposition without notice, failure to object to the scheduling of his deposition, and failure to comply with this Court's September 18, 2017 Order directing a Response to the Motion, the Court finds that Plaintiff's Complaint should be dismissed without prejudice.

IT IS, THEREFORE, RECOMMENDED that:

1. Defendants' Motion for Sanctions be GRANTED in part, with respect to the dismissal of Plaintiff's Complaint.
2. Plaintiff's Complaint be dismissed without prejudice, for failure to prosecute.

IT IS SO RECOMMENDED this 19th day of October, 2017.



JEROME T. KEARNEY
UNITED STATES MAGISTRATE JUDGE