

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

PEDRO HERNANDEZ, JR.

PLAINTIFF

v.

Civil No. 08-2096

JOSEPH ARMER, Fort Smith
Police Department

DEFENDANT

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Pedro Hernandez, Jr., filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. His complaint was provisionally filed prior to a determination of his status as a pauper and whether service of process on the defendant should be made.

On August 18, 2008, the undersigned entered an order (Doc. 2) directing Hernandez to complete, sign, and return an *in forma pauperis* application or pay the \$350 filing fee by September 18, 2008. Thereafter, all mail sent to Hernandez at the Sebastian County Detention Center was returned as undeliverable. Plaintiff failed to provide the court with a change of address. However, court staff obtained from detention center staff the home address Hernandez had provided detention center officials. A change of address (Doc. 3) was entered on his behalf. All mail was re-sent.

An order was then entered directing Hernandez to complete, sign and return an attached addendum to his complaint (Doc. 4). The addendum was to be returned by October 10, 2008.

To date, the plaintiff has failed to return the IFP application or pay the filing fee. Plaintiff has failed to file his addendum.

The mail sent to his home address including the order directing him to file the IFP application or pay the filing fee and the court's order and attached addendum have not been returned as undeliverable. Plaintiff has not informed the court of any change in his address.

Plaintiff has not communicated with the court.

I therefore recommend Hernandez's claims be dismissed on the grounds he has failed to prosecute this action and comply with the orders of the court. *See* Fed. R. Civ. P. 41(b).

Hernandez has ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. Hernandez is reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 20th day of April 2009.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE