

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

BRYANT SIMS

PLAINTIFF

v.

Civil No. 4:08-cv-04094

BOBBY CARLTON, Sheriff,
Nevada County, Arkansas

DEFENDANT

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

This civil rights action was filed by the Plaintiff, Bryant Sims (hereinafter Sims), pursuant to the provisions of 42 U.S.C. § 1983. He proceeds *pro se* and *in forma pauperis*. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3)(2007), the Honorable Harry F. Barnes, United States District Judge, referred this case to the undersigned for the purpose of making a report and recommendation.

When he filed this action, Sims was incarcerated in the Arkansas Department of Correction. On January 9, 2009, Sims notified this Court that he was no longer incarcerated and was living in Texarkana, Arkansas (Doc. 9).

On April 15, 2009, an order was entered (Doc. 12) granting Defendant's motion to compel. Sims was directed to provide Defendant with discovery responses by May 8, 2009.

On May 14, 2009, Defendant filed a motion to dismiss (Doc. 13). In the motion, Defendant noted he did not receive the discovery responses from Sims. Defendant asks that the case be dismissed based on Sims' failure to comply with the Court's order.

On May 26, 2009, two docket entries were made by the court clerk reflecting that mail addressed to Sims in Texarkana at the address he provided in January had been returned as undeliverable. Further, on May 26, 2009, Defendant filed a notice of returned mail (Doc. 14).

Defendant indicates the envelope in which he mailed documents to Sims was returned with a notation return to sender, moved, no forwarding address.

I therefore recommend that the motion to dismiss be granted (Doc. 13) and that this case be dismissed based on Sims' failure to obey the orders of this court, his failure to prosecute this action, and his failure to keep the Court and opposing counsel informed of his current address. Fed. R. Civ. P. 41(b); Rule 5.5 of the Local Rules of the Eastern and Western Districts of Arkansas.

The parties have ten (10) days from receipt of this 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. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 8th day of June 2009.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
UNITED STATES MAGISTRATE JUDGE