

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

JOHNNY LEE NICHOLS

PLAINTIFF

v.

Civil No. 03-5292

SHERIFF STEVE WHITMILL, CORPORAL
MCCARTNEY, SGT. LINDABURY, DANIEL
BAKER, SCOTT HAMMERSLA, and EARL
GOODHEART

DEFENDANTS

ORDER

Now pending before the court is plaintiff's motion (Doc. 37) for Relief from Judgment. This motion has been referred (Doc. 38) to the undersigned by order of the district court.

On April 14, 2005, the defendants in this action filed a motion (Doc. 30) for summary judgment, as directed (Doc. 29) by order of the court. The court then prepared a summary judgment response questionnaire for the plaintiff to complete and return, and plaintiff was directed (Doc. 33) to return that response no later than June 3, 2005. On June 23, 2005, the undersigned issued a Report and Recommendation (Doc. 34), recommending that the entire action be dismissed due to plaintiff's failure to comply with the court's order by returning the completed response questionnaire. The district court adopted (Doc. 35) this report, and plaintiff's case was dismissed on July 21, 2005.

On August 3, 2005, the plaintiff then submitted his response (Doc. 36) to the defendants' motion for summary judgment, and he later filed this motion (Doc. 37) now pending for Relief from Judgment. In this motion, plaintiff states that he recently moved to the Hot Springs, Arkansas area to avoid involvement in methamphetamine drugs in Northwest Arkansas. He requests that the court make a final decision on his case.

Due to the court's preference for deciding cases on their merits, plaintiff's motion for Relief from Judgment is GRANTED, and this case is reopened for consideration of defendants' motion for summary judgment. *See* Fed. R. Civ. P. 60(b)(1) (allowing relief from final judgment due to mistake, inadvertence, surprise, or excusable neglect).

IT IS SO ORDERED this 29th day of August 2005.

/s/ Beverly Stites Jones

HON. BEVERLY STITES JONES
UNITED STATES MAGISTRATE JUDGE