

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

LEE FLOYD BEBLEY,

PLAINTIFF

v.

CASE NO. 07-5028

ANDREA GARRETT, Nurse; and
DOCTOR HUSKINS; SGT. TOMLIN;
LT. CARTER; CAPTAIN PETRAY;
DEPUTY CYPERT; and DEPUTY
HADLEY

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Now before the Court is the Motion to Dismiss (Doc. 46) filed by the Defendants. This case was set for an evidentiary hearing on July 31, 2008, on Plaintiff's remaining claim which was that excessive force had been used against him by Defendant Tomlin. A Report and Recommendation (Doc. 38) had been entered by the undersigned recommending the dismissal of Plaintiff's other allegations, and this Report and Recommendation was adopted by the district judge. (Doc. 39).

However, Plaintiff sought a continuance of the evidentiary hearing, stating he would not have transportation to the hearing until a later date. Correspondence with the Plaintiff stated Plaintiff would be in contact with the Court regarding his ability to be present at the hearing in order for a subsequent date to be set for Plaintiff's hearing. Plaintiff has not kept in contact with the Court, and mail attempted to be sent to the Plaintiff has been returned. No new address is available for the Plaintiff.

Accordingly, I recommend Defendants' Motion to Dismiss (Doc. 46) be GRANTED and Plaintiff's case be DISMISSED without prejudice for failure to prosecute and/or failure to comply with Local Rule 5.5 (c) (2) of the Eastern and Western Districts of Arkansas. **Plaintiff has 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. Plaintiff is reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 30th day of July, 2009.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE