

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

KENNETH D. HULEN

PLAINTIFF

v.

Civil No. 08-5004

NURSE SUSAN JOHNSON;
and NURSE BRADLEY

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff filed this action pursuant to the provisions of 42 U.S.C. § 1983. He proceeds *pro se* and *in forma pauperis*. At the time he filed the action, he was incarcerated at the Benton County Detention Center.

In September of 2008, all mail sent to the plaintiff at the Benton County Detention Center (BCDC) was been returned as undeliverable. The court learned that plaintiff was released from the BCDC. Plaintiff did not notify the court of his new address. Review of public records databases indicated plaintiff had previously reported an address in Prairie Grove, Arkansas. The court directed a change of address on his behalf. All mail sent to this address has been returned as undeliverable.

Plaintiff has not contacted the court. No other address is available. Defendants have filed a motion to dismiss (Doc. 18) based on the plaintiff's failure to keep the court and opposing counsel informed of his address as is required by Rule 5.5 of the Local Rules of the Eastern and Western Districts of Arkansas. Defendants have been unable to serve the plaintiff with any discovery requests or with their summary judgment motion.

I therefore recommend that the defendants' motion to dismiss be granted and this case be dismissed based on the plaintiff's failure to prosecute this action and his failure to keep the court and opposing counsel informed of his address. Fed. R. Civ. P. 41(b); Local Rule 5.5.

The parties have 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. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 2nd day of April 2009.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE