

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

JAMES PATRICK THOMAS

PLAINTIFF

v.

Civil No. 09-5177

SHERIFF KEITH FERGUSON, et al.

DEFENDANTS

O R D E R

Now on this 10th day of November, 2010, come on for consideration the **Magistrate Judge's Report And Recommendation** (document #5), and plaintiff's **Objection** thereto (document #6), and the Court, being well and sufficiently advised, finds and orders as follows:

1. The Magistrate Judge reported that a piece of mail related to this case was sent to plaintiff at the Benton County Detention Center, and then returned to the Court, marked "return to sender" and "not here," on November 5, 2009. There has been no activity in the case since that date. The Magistrate Judge recommended that the matter be dismissed for plaintiff's failure to prosecute and failure to keep the Court informed of his address.

2. Plaintiff promptly<sup>1</sup> filed an Objection, stating that his address is "still 'Benton County Detention Center - 1300 S.W. 14th St. - Bentonville, AR 72712'." He states that he does wish to

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<sup>1</sup>Plaintiff dated his response September 8, 2010, although it was not filed until September 21, 2010. It appears that this response was erroneously mailed to the United States District Court for the Eastern District of Arkansas on September 10, 2010.

follow this action through to conclusion.

3. From the Objection, it appears that plaintiff never received the 2009 mailing. It also appears from the docket that the Complaint has never been served on the defendants. Under these circumstances, the Court finds that the Magistrate Judge's Report And Recommendation should not be adopted, and that this matter should be remanded to the Magistrate Judge for further handling.

**IT IS THEREFORE ORDERED** that the **Magistrate Judge's Report And Recommendation** (document #5) is **not adopted**.

**IT IS FURTHER ORDERED** that plaintiff's **Objection** thereto (document #6) is **sustained**.

**IT IS FURTHER ORDERED** that this matter is **remanded** to United States Magistrate Judge Erin L. Setser for further proceedings.

**IT IS SO ORDERED.**

/s/ Jimm Larry Hendren  
**JIMM LARRY HENDREN**  
**UNITED STATES DISTRICT JUDGE**