

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

JOHNNY HESTER

PLAINTIFF

v.

Case No. 5:14-CV-05058

SHERIFF TIM HELDER; MAJOR RANDALL
DENZER; OFFICER CHARLES L. TUCKER;
WILLARD HOWARD; NURSE RHONDA
BRADLEY; and RICK HAYWOOD

DEFENDANTS

ORDER

Before the Court are the proposed findings and recommendations (Doc. 12) filed by United States Magistrate Judge Erin L. Setser. Also before the Court are Plaintiff Johnny Hester's timely filed objections (Doc. 14).

The Magistrate recommends dismissal of this action for failure to obey an order of the Court and for failure to prosecute. Mr. Hester responded by providing a current address and appearing to explain that he failed to respond to the Court's show-cause order (Doc. 11) because of his move. The record reflects that the show-cause order was originally sent to Mr. Hester's former address and returned marked undeliverable.

The Court finds that Mr. Hester has established good cause and excusable neglect justifying his failure to comply with the show-cause order in a timely fashion. The Court therefore **DECLINES TO ADOPT** the report and recommendation of the Magistrate (Doc. 12).

The Clerk is directed to resend to Mr. Hester—along with this order—a copy of the order entered by the Magistrate on March 6, 2014 (Doc. 8) and a court-approved § 1983 form for use in filing an amended complaint.

Mr. Hester is ORDERED to file an amended complaint **by August 18, 2014**. As previously directed by the Magistrate (Doc. 8), in the amended complaint, Mr. Hester must write short, plain statements telling the Court: (1) the constitutional right(s) Mr. Hester believes was violated; (2) the name of the Defendant(s) who violated the right; (3) exactly what the Defendant(s) did or failed to do; (4) how the action or inaction is connected to the violation of Mr. Hester's constitutional rights; and (5) what specific injury Mr. Hester suffered because of each Defendant's conduct. Mr. Hester must clearly designate on the face of the document that it is a first amended complaint. The first amended complaint must be retyped or rewritten in its entirety on the court-approved form and may not incorporate any part of the original complaint by reference. **Mr. Hester is advised that if he fails to properly file an amended complaint, as ordered, by August 18, 2014, his complaint WILL BE DISMISSED WITH PREJUDICE FOR FAILURE TO OBEY AN ORDER OF THE COURT AND FAILURE TO PROSECUTE THIS ACTION.**

IT IS FURTHER ORDERED that Mr. Hester's pending motion to supplement the complaint (Doc. 9) is DENIED AS MOOTED by this order.

The Clerk of Court is additionally directed to re-refer this matter to the Magistrate for preliminary adjudication.

IT IS SO ORDERED this 31st day of July, 2014.

P. K. Holmes, III
P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE