

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

DAMON THOMPSON

PLAINTIFF

v.

Civil No. 06-6023

CAPTAIN MELVIN STEED

DEFENDANT

O R D E R

Now on this 9th day of June, 2009, comes on for consideration the **Report And Recommendation Of The Magistrate Judge** (document #50), and plaintiff's **Response** thereto (document #51), and from these documents the Court finds and orders as follows:

1. An evidentiary hearing is scheduled in this *pro se* case on June 18, 2009, before United States Magistrate Judge Barry Bryant. On April 7, 2009, Judge Bryant issued an Order directing the parties to file witness lists and exhibit lists by May 19, 2009, and explaining that the Court would subpoena witnesses for the plaintiff up to May 19, 2009.

Plaintiff failed to file either a witness or an exhibit list, and did not communicate with the Court about the case. Judge Bryant now recommends that the matter be dismissed for failure to prosecute.

2. Plaintiff objects that he has had problems locating witnesses, and that he has had trouble sending and receiving mail at his new address.

3. The Court has considered whether these objections, taken at face value, would justify another continuance of this case, and

finds that they do not. This case was filed on June 5, 2006. If plaintiff has not been able to locate his witnesses in the intervening three years, the Court finds no reason to believe that he will find them at any time in the future.

In addition, while plaintiff might have chosen to present his case based on his testimony alone, he did not so advise the Court. None of the Court's mail to plaintiff has been returned, and he received the R&R and was able to respond in a timely fashion, making it unlikely that plaintiff's failure to respond to Judge Bryant's Order with regard to witness and exhibit lists was because it was not received.

IT IS THEREFORE ORDERED that the **Report And Recommendation Of The Magistrate Judge** (document #50) is **adopted in toto**, and plaintiff's **Response** thereto is **overruled**.

IT IS FURTHER ORDERED that this matter is **dismissed without prejudice** for failure to prosecute.

IT IS SO ORDERED.

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