

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No 17-cv-02402-RBJ-KLM

TAYLOR MOUDY,

Plaintiff,

v.

RICK RAEMISCH, Executive Director,
SHAWNA NYGAARD, Chapel Lt., and
DONALD O'DELL, Regional Volunteer Coord.,

Defendants.

ORDER

This matter is before the court on the Recommendation of Magistrate Judge Kristen L. Mix, ECF No. 44. Plaintiff Taylor Moudy proceeds *pro se* and filed his complaint in the present suit on October 4, 2017. On March 22, 2018 he moved for a Ruling on Judgment of Pleadings. ECF No. 17. Judge Mix recommended that this motion be denied. ECF No. 30. On June 4, 2018, Mr. Moudy moved for summary judgment. ECF No. 20. Defendants responded to this motion on July 27, 2018, ECF No. 35, and moved for summary judgment on October 29, 2018, ECF No. 39.

On November 29, 2018 Judge Mix ordered plaintiff to file a notice providing his current mailing address no later than December 17, 2018 and to file a response to defendants' motion for summary judgment no later than December 21, 2018. ECF No. 41. Plaintiff did neither of these things. On January 10, 2019 Judge Mix ordered plaintiff to show cause as to why the case should not be dismissed for failure to prosecute his lawsuit. ECF No. 42. On February 5, 2019

Judge Mix Recommended that the Mr. Moudy's lawsuit be dismissed without prejudice. ECF No. 44. The Recommendation is incorporated herein by reference. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b). On March 5, 2019 Judge Mix denied plaintiff's motion for summary judgment, ECF No. 20, and defendants' motion for summary judgment, ECF No. 39, without prejudice as moot in view of the pending Recommendation that the action be dismissed and the absence of timely objections to the Recommendation. ECF No 45.

That leaves as presently pending only plaintiff's motion for a ruling on his request for judgment on the pleadings, in substance a motion for judgment on the pleadings, ECF No. 17; the magistrate judge's Recommendation that his request be denied, ECF No. 30; and the magistrate judge's Recommendation that the case be dismissed without prejudice for failure to prosecute, ECF No. 44. The Recommendations advised the parties that specific written objections were due within fourteen days after being served with a copy of the Recommendation, and that failure to make timely objections may bar de novo review by the district judge of the magistrate judge's proposed findings and recommendations. ECF No. 44 at 4. Despite this advisement, Mr. Moudy did not file any objections to either Recommendation.

“In the absence of timely objection, the district court may review a magistrate [judge]'s report under any standard it deems appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *Thomas v. Arn*, 474 U.S. 140, 150 (1985)). The Court has reviewed the Recommendation, ECF No. 44. Based on this review, the Court concludes that Judge Mix's analysis and recommendations are correct, and that “there is no clear error on the face of the record.” *See* Fed. R. Civ. P. 72 Advisory Committee's Note (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

I agree with Judge Mix that plaintiff has abandoned his lawsuit. Therefore, the Court ADOPTS the Recommendation that the case be dismissed without prejudice as the findings and conclusions of this Court.

ORDER

- (1) The magistrate judge's February 5, 2019 Recommendation, ECF No. 44, is AFFIRMED and ADOPTED, and the case is dismissed without prejudice for failure to prosecute.
- (2) Plaintiff's motion for judgment on the pleadings, ECF No. 17, and the March 22, 2018 Recommendation on this motion, ECF No. 30, are MOOT.
- (3) As the prevailing parties, defendants are awarded their reasonable costs pursuant to Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1. Final judgment will enter accordingly.

DATED this 11th day of March, 2019.

BY THE COURT:



R. Brooke Jackson
United States District Judge