

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CARLOS D. CLARK,

Plaintiff,

v.

Case No: 2:13-cv-820-FtM-29MRM

SCHOOL BOARD OF COLLIER
COUNTY, FLORIDA and MARK
ROSENBALM, in his individual
capacity,

Defendants.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #99), filed August 9, 2016, recommending that plaintiff's Third Amended Complaint (Doc. #89) be dismissed. Plaintiff filed Objections (Doc. #102) on August 23, 2016.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); United States v. Powell, 628 F.3d 1254, 1256 (11th Cir. 2010). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. §

636(b)(1)(C). See also United States v. Farias-Gonzalez, 556 F.3d 1181, 1184 n.1 (11th Cir. 2009). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. v. State Bd. of Educ. of Ga., 896 F.2d 507, 512 (11th Cir. 1990)(quoting H.R. 1609, 94th Cong., § 2 (1976)). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994).

Plaintiff argues that the Magistrate Judge failed to make factual findings on the merits of defendants' Motion for Summary Judgment (Doc. #91), which is not actually in dispute, and that the recommendation for dismissal is based solely on plaintiff's failure to oppose the motion. Plaintiff acknowledges that the response "is untimely", but does not indicate when it will be filed or whether a third extension of time will be filed seeking additional time to respond. Rather, plaintiff objects and "requests that the Court consider the Response to the Motion for Summary Judgment on its merits." It is unclear what response plaintiff seeks to have the Court consider since no response has been filed.

On June 3, 2016, the Clerk of Court issued a standard Summary Judgment Notice (Doc. #92), the same day that defendants filed their Motion for Summary Judgment. Plaintiff sought and obtained an extension of time through June 27, 2016, and a second extension of time through July 11, 2016 to respond to defendants' Motion for Summary Judgment. (Docs. ## 94, 97.) In between seeking the extensions of time, on June 29, 2016, plaintiff filed a Notice of Filing Supplemental Documents to Plaintiff's Motion to Compel (Doc. #96) and attached the Affidavit of Barbara J. Clark (Doc. #96-1).

On July 25, 2016, finding no response, the Magistrate Judge issued an Order to Show Cause (Doc. #98) directing plaintiff to show cause for the failure to respond and to file a response. Plaintiff was on notice that the failure to do so would result in a recommendation for dismissal of the Third Amended Complaint. Plaintiff did not respond to the Order to Show Cause and did not respond to the Motion for Summary Judgment. On August 9, 2016, just over two months after the filing of the Motion for Summary Judgment, the Magistrate Judge issued the Report and Recommendation finding that plaintiff had "blatantly failed to comply with two successive Court Orders" and that the only conclusion was one of "willful delay" warranting dismissal.

Thereafter, within the timeframe to file objections to the Report and Recommendation, plaintiff filed a Notice of Filing Supplemental Documents to Plaintiff's Motion to Compel (Doc. #100) and attached an email described as "Exhibit A to Affidavit of Barbara J. Clark in opposition to Defendant's Motion for Summary Judgment"¹ and also filed a Notice of Filing Supplemental Documents to Plaintiff's Motion in Opposition to Motion for Summary Judgment (Doc. #101) and attaches plaintiff's answers to interrogatories and depositions. Once again, no "Motion in Opposition" or any other type of response was filed. Even if plaintiff was mistaken in his belief that a response had been filed, the Court has made it abundantly clear that no response has been filed.

After a careful and complete review of the findings and recommendations, as well as a *de novo* review of the record in this case, the Court will overrule the objection and dismiss the Third Amended Complaint.

Accordingly, it is now

ORDERED:

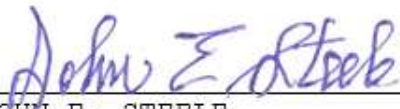
1. The Report and Recommendation (Doc. #99) is hereby **ADOPTED** and the findings incorporated herein.

2. Plaintiff's Objections (Doc. #102) are **overruled**.

¹ No motions to compel are currently pending in this case.

3. The Third Amended Complaint (Doc. #89) is **dismissed** without prejudice for failure to prosecute, except as to the applicable statute of limitations. The Clerk shall terminate all pending motions and deadlines and close the file.

DONE and ORDERED at Fort Myers, Florida, this 25th day of August, 2016.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Hon. Mac R. McCoy
All Parties of Record