

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

WILLIE FOSTER, JR.,

Plaintiff,

v.

Case No: 6:13-cv-1739-Orl-36GJK

**7-ELEVEN CORP., INC., VIVIAN
MESSER, DARIO TREJOS, JEAN
DORIALAS, DONA THOMAS,
SOUTHLAND CORPORATION, INC.,
SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC., STEPHEN NEGRON,
ANDREW SERANO, JEFFRY J.
BRANHAM, CENTRA CARE
GROUP/FLORIDA HOSPITAL
URGENT CARE, MY-DUC NGUYEN,
ORLANDO ORTHOPAEDIC CENTER,
RANDY S. SCHWARTZBERG and
FRANK JOHNSON,**

Defendants.

ORDER

This cause comes before the Court on the Report and Recommendation (“R&R”) filed by Magistrate Judge Gregory J. Kelly on February 18, 2014. Doc. 4. In the R&R, Judge Kelly recommends dismissing Plaintiff Willie Foster, Jr.’s (“Foster”) case without prejudice. *Id.* On February 27, 2014, Foster filed an objection (“Objection”) to the R&R. Doc. 5.

After careful consideration of the R&R, in conjunction with an independent examination of the court file, the Court is of the opinion that Judge Kelly’s R&R should be adopted, confirmed, and approved in all respects for the reasons that follow.

On January 21, 2014, Judge Kelly entered an Order denying Foster’s Application to Proceed in District Court Without Prepaying Fees or Costs, without prejudice, and dismissing the

Complaint as a shotgun pleading. Doc. 3. Judge Kelly directed Foster to file an amended complaint within twenty-one (21) days from the date the Order was entered and listed specific directives Foster should follow in drafting the amended complaint. *Id.* at 5-6. Furthermore, Judge Kelly cautioned Foster, in bold type, that “[f]ailure to file an amended complaint and renew the motion to proceed *in forma pauperis* or pay the full filing fee within the time provided may result in a recommendation that the case be dismissed without further warning[.]” *Id.* at 7. Foster failed to file an amended complaint within the time provided in the Order or to request an extension of time to file an amended complaint. Because of Foster’s failure to comply with the aforementioned deadline, Judge Kelly filed the instant R&R recommending dismissal of Foster’s case without prejudice for failure to prosecute. Doc. 4.

On February 27, 2014, Foster filed a timely Objection to the R&R. Doc. 5. In the Objection, Foster acknowledges that he was given 21 days from the date Judge Kelly’s Order was entered to file an amended complaint and that he was warned that his failure to file the amended complaint within the allotted time could result in a recommendation that his case be dismissed. *Id.* at 2-3. Foster then goes on to allege that Judge Kelly should disqualify himself due to personal biases or prejudices against Foster.¹ *Id.* at 3–5. Other than mentioning a previous case that Judge Kelly presided over where Foster was also the Plaintiff, Foster fails to articulate any facts to support his allegations against Judge Kelly. *Id.* Foster submitted an affidavit attached to his Objection, which merely alleges several conclusory allegations without any factual basis against several judges in the Middle District of Florida, Orlando Division. Doc. 5-1 at 7-10. However,

¹ The Court notes that Foster has not filed a motion for disqualification of Magistrate Judge Kelly.

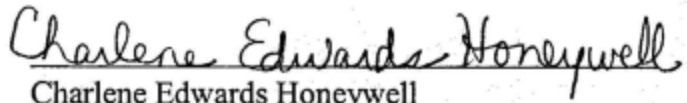
nowhere does Foster explain why he failed to comply with Judge Kelly's deadline to file an amended complaint in this action. Doc. 5.

In light of the fact that Foster has made no attempt to explain why he failed to comply with the deadline set by Judge Kelly's Order, the Court agrees with Judge Kelly's recommendations that this case should be dismissed without prejudice for failure to prosecute.

Accordingly, it is hereby **ORDERED** and **ADJUDGED**:

1. The Report and Recommendation of Magistrate Judge Kelly (Doc. 4) is adopted, confirmed, and approved in all respects and is made a part of this Order for all purposes, including appellate review.
2. The Clerk is directed to terminate all pending motions and deadlines and **CLOSE** this case.
3. The Clerk of Court is further directed to send a copy of this Order to Plaintiff Foster by certified and regular mail.

DONE and **ORDERED** in Orlando, Florida on April 10, 2014.


Charlene Edwards Honeywell
United States District Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties
U.S. Magistrate Judge Gregory J. Kelly