

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

KIMBERLY ANN SPENCER,

Plaintiff,

vs.

Case No. 4:08cv181-RH/WCS

MORRIS G. STEEN, et al.,

Defendants.

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REPORT AND RECOMMENDATION

This cause is before the court upon referral from the clerk. Plaintiff initiated this case through the filing of a civil complaint, doc. 1, and paid the appropriate filing fee on April 21, 2008. On May 8, 2008, this court entered an order directing the clerk to issue summons to the Plaintiff and advised the Plaintiff of her burden in serving the Defendants with a copy of the complaint within 120 days as required by Rule 4 of the Federal Rules of Civil Procedure. Doc. 3. Because no activity had occurred in this case since the filing of the complaint, the court entered another order on November 12, 2008, directing the Plaintiff to show cause by November 26, 2008, why this case should not be

dismissed for her failure to prosecute by not serving the Defendants. Doc. 5. To date, Plaintiff has not responded to that order.

A trial court has inherent power to dismiss a case sua sponte for failure to prosecute. See Link v. Wabash R.R., 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962). Fed. R. Civ. P. 41(b) authorizes a district court to dismiss an action for failure to obey a court order. Moon v. Newsome, 863 F.2d 835, 838 and cases cited (11th Cir.) *cert. denied*, 493 U.S. 863 (1989). Because Plaintiff has failed to prosecute his case, his complaint should be dismissed.

Plaintiff shall have a 15 day period after service of this report and recommendation in which to file objections. This will also afford Plaintiff a final opportunity to show good cause for this failure to respond. Plaintiff may do so by filing a motion for reconsideration which will be referred to me by the Clerk.

It is therefore respectfully **RECOMMENDED** that this case be **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

IN CHAMBERS at Tallahassee, Florida, on December 10, 2008.

s/ William C. Sherrill, Jr.

WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

Within 15 days after being served with a copy of this report and recommendation, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.