

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO: 09-21942-CIV-GOLD/WHITE

CHARLES EDWARD DAVIS,

Plaintiff,

v.

DADE COUNTY JAIL, *et al.*,

Defendants.

**ORDER ADOPTING AND AFFIRMING IN PART MAGISTRATE'S REPORT
AND RECOMMENDATION [ECF No. 115]; DENYING AS MOOT DEFENDANTS'
MOTION TO DISMISS FOR LACK OF PROSECUTION [ECF No. 90]; DENYING
WITHOUT PREJUDICE DEFENDANTS' MOTION TO DISMISS [ECF No. 100]**

THIS CAUSE is before the Court upon U.S. Magistrate Judge Patrick A. White's Report and Recommendation entered April 13, 2011 ("Report"). [ECF No. 115]. The Report recommends denying as moot Defendants Amica, Cambridge and Roach's (collectively "Defendants") Motion to Dismiss for Lack of Prosecution [ECF No. 90] and denying without prejudice Motion to Strike and Motion to Dismiss [ECF No. 100]. No party has filed objections to the Report, and the time for doing so has expired.

On December 17, 2010, Defendants filed a Notice of Plaintiff's Failure to File a Pretrial Statement and Motion to Dismiss for Lack of Prosecution. [ECF No. 90]. The Report notes that Plaintiff has continued to litigate this case and therefore, the Motion to Dismiss based on lack of prosecution should be denied as moot. [ECF No. 115, p. 2]. The Report also recommends granting Plaintiff an extension of time to file his Pre-Trial Statement. However, Plaintiff filed his Pre-Trial Statement on May 6, 2011. [ECF No. 117]. Accordingly, an extension of time is unnecessary.

On February 15, 2011, Defendants filed a "(1) Response to Plaintiff's Motions For Extention [sic] of Time and Submission of Exhibits; (2) Motion to Strike; and (3) Motion to Dismiss." **[ECF No. 100]**. In this filing, Defendants contend that Plaintiff perpetrated fraud by submitting "what appears to be a doctored copy of a mailing envelope **[ECF No. 98, Ex. B]** . . . purportedly showing that [counsel for Defendants] did not send Defendants" motions to Plaintiff until some 3 ½ weeks after certifying that they were mailed." *Id.* at 1. Defendants move to strike the exhibit, arguing that it is irrelevant and inauthentic. Defendants also move to dismiss Plaintiff's complaint for "[his] continued attempts to perpetrate fraud on this court and to abuse the judicial process." *Id.*


The Report correctly notes that there is a pending Motion for Summary Judgment wherein Defendants argue that the complaint should be dismissed because Plaintiff appears to be perpetuating a fraud on the Court. See **[ECF No. 91 § II]**. The Report indicates that Defendants' claims should be addressed in their totality upon review of the Motion for Summary Judgment, rather than in piecemeal fashion. On February 9, 2011, Judge White issued a paperless order granting Plaintiff's Motion for Submission of Exhibits **[ECF No. 98]**, but specifically noted that "[t]his is not a ruling on the relevancy of the exhibits[.]" **[ECF No. 99]**. Finally, the Report suggests that Defendants "may wish to supplement their motion for summary judgment with further argument or exhibits supporting their claim that the [P]laintiff has perpetuated a fraud upon the Court." **[ECF No. 115, p. 3]**.

Having reviewed the Report, Motions to Dismiss, Motion to Strike, record, and applicable law, as well as noting that no objections have been filed, it is hereby

ORDERED AND ADJUDGED:

1. The Report **[ECF No. 115]** is AFFIRMED AND ADOPTED IN PART.
2. Defendants' Motion to Dismiss for Lack of Prosecution **[ECF No. 90]** is DENIED AS MOOT.
3. Defendants' Motion to Strike and Motion to Dismiss **[ECF No. 100]** are DENIED WITHOUT PREJUDICE.
 - a. Defendants may supplement their Motion for Final Summary Judgment **[ECF No. 91]** with further argument or exhibits supporting their claim that Plaintiff has perpetuated a fraud upon the Court **no later than Tuesday, May 24, 2011.**
 - b. If Defendants file supplemental briefing as indicated in the foregoing paragraph, Plaintiff shall file a response **no later than Wednesday, June 8, 2011.**

DONE AND ORDERED in Chambers at Miami, Florida this 11 day of May, 2011.



THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Patrick White
Counsel of record

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[sent from Chambers via U.S. Mail]