IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CANDIDA R. SUMMERLIN, **Plaintiff,** **v.** **STARS-N-STRIKES - DALLAS,** **Defendant.**	**1:12-cv-2442-WSD**

OPINION AND ORDER

This matter is before the Court on Magistrate Judge E. Clayton Scofield III's Final Report and Recommendation [28] ("R&R") recommending dismissal of this action under Rule 41(b) and Rule 37 of the Federal Rules of Civil Procedure for failure to obey an order of the Court.

I. BACKGROUND[1]

On July 12, 2012, Plaintiff Candida Summerlin ("Plaintiff"), proceeding *pro se*, filed this Title VII employment discrimination action against her former employer, Stars-N-Strikes - Dallas ("Defendant"). On February 27, 2013,

[1] The facts are more thoroughly discussed in the R&R. The parties do not object to the facts set out in the R&R, and finding no plain error in the Magistrate Judge's findings, the Court adopts the facts in the R&R. See Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir.1993). The Court briefly summarizes the relevant facts here.

Magistrate Judge Janet F. King conducted a mediation, which was unsuccessful.

Before the mediation, Plaintiff had been served with discovery requests with responses due by February 25, 2013. Over Defendant's objections, Plaintiff refused to respond to the requests until after the mediation.

On March 11, 2013, Defendant filed a motion to compel discovery responses from Plaintiff, and on April 18, 2013, Defendant filed a motion to extend discovery. Plaintiff did not respond to either motion.[2] On April 22, 2013, Judge Scofield granted both motions and ordered Plaintiff to respond to Defendant's discovery requests within seven (7) days and to appear at her deposition as required. Judge Scofield's order warned Plaintiff that failure to comply could result in dismissal. Plaintiff did not produce discovery responses or otherwise respond to Judge Scofield's Orders. On May 10, 2013, Plaintiff failed to appear for her deposition, and did not notify Defendant that she would not attend. On May 3, 2013, Defendant filed its Motion to Dismiss due to Plaintiff's failure to respond to discovery requests. Plaintiff did not oppose or otherwise respond to the motion. On May 28, 2013, Judge Scofield issued his R&R recommending that the Motion to Dismiss be granted. Plaintiff did not file objections to the R&R.

[2] Before Defendant filed its motions, Judge Scofield attempted to schedule a conference with the parties. Plaintiff ignored Judge Scofield's e-mail and telephone messages.

II. DISCUSSION

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1) (Supp. V 2011); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam). 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). If no party has objected to the report and recommendation, a court conducts only a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983) (per curiam).

B. Analysis

Plaintiff does not object to the Magistrate Judge's findings that this action should be dismissed with prejudice under Rule 41(b) and Rule 37 because Plaintiff has engaged in a clear pattern of delay by failing to provide discovery responses as directed by the Court's Order, failing to attend her deposition, and being unresponsive to both the Court and Defendant since the failed mediation. The Court does not find plain error in these findings. See Fed. R. Civ. P. 41(b) (authorizing a district court to dismiss a complaint for failure to prosecute or obey

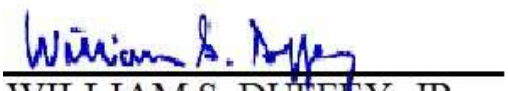
a court order or federal rule); Fed. R. Civ. P. 37(b)(2)(A) (authorizing a district court to dismiss an action for failure to comply with a discovery order); see also Betty K Agencies, Ltd. v. M/V MONADA, 432 F.3d 1333, 1338 (11th Cir. 2005) (holding that a district court may dismiss an action with prejudice when Plaintiff engages in a clear pattern of delay and lesser sanctions are inadequate to correct such conduct). The Court finds that this action should be dismissed with prejudice.

III. CONCLUSION

Accordingly, for the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge E. Clayton Scofield III's Final Report and Recommendation [26] is **ADOPTED**. This action is **DISMISSED WITH PREJUDICE** pursuant to Rule 41(b) and Rule 37 of the Federal Rules of Civil Procedure.

SO ORDERED this 24th day of September, 2013.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE