

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

WILHY HARPO,

Plaintiff,

v.

1:14-cv-438-WSD

**MAGISTRATE COURT OF
FULTON COUNTY, et al.,**

Defendants.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Clayton Scofield's Final Report and Recommendation ("R&R"), which recommends that this action be dismissed without prejudice for failure to obey a lawful Order of the Court [4].

I. BACKGROUND

On February 14, 2014, Plaintiff, proceeding *pro se*, filed an application for leave to proceed *in forma pauperis* ("IFP"), and a Complaint in which he asserted several state law claims against Defendants, and alleged that the Defendants violated his constitutional rights in connection with a landlord-tenant dispute. On February 28, 2014, Magistrate Judge Scofield denied the Plaintiff's IFP application, and ordered the Plaintiff to submit a new affidavit of poverty or pay

the filing fee, within 14 days of entry of the R&R, because the IFP application did not include any information regarding the Plaintiff's employment history, or cash held in a bank account, and Plaintiff did not answer other questions on the application. The Magistrate Judge also found that Plaintiff's answers to questions regarding his monthly earnings were inconsistent with an IFP application submitted by Plaintiff in another case pending before the Court. In Harpo v. City of Sandy Springs, Plaintiff declared that he had earned an average of \$1,250 per month over the last 12 months, but in this action, Plaintiff claims that he had no income over the same time period. No. 1:13-cv-4118-WSD (N.D. Ga. Dec. 19, 2013).

The Final R&R directed the Plaintiff to provide an explanation for the apparent inconsistencies in his IFP applications, and admonished the Plaintiff that a failure to submit a new IFP application or pay the filing fee within 14 days of the R&R's entry would result in a recommendation that this action be dismissed. Plaintiff did not file a corrected IFP application or provide an explanation for the apparent inconsistencies regarding his income on the IFP applications submitted to the Court. On February 28, 2014, Magistrate Judge Scofield issued his Final R&R, and recommended that this action be dismissed. Plaintiff did not object to the R&R.

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); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982). 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). With respect to those findings and recommendations to which objections have not been asserted, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983). Plaintiff has not objected to the R&R and thus the R&R is reviewed for plain error.

B. Analysis

Local Rule 41.3 provides that the Court may dismiss a civil case for want of prosecution if a plaintiff fails to obey a lawful Order of the Court. L.R. 41.3 A.(2), N.D. Ga. Plaintiff failed to comply with the deadline set by the R&R after being admonished that if he failed to correct the IFP application and provide an explanation for the inconsistencies in his submissions to the Court, this action

would be dismissed. See id. Because Plaintiff failed to obey a lawful Order of the Court, the Court finds no plain error in the Magistrate Judge's recommendation, and dismisses this action without prejudice.


III. CONCLUSION

Accordingly, for the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Scofield's Final R&R is **ADOPTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED WITHOUT PREJUDICE** pursuant to Local Rule 41.3 A.(2).

SO ORDERED this 15th day of May 2014.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE