

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

RODNEY DAVIS,

Plaintiff,

v.

1:16-cv-04191-WSD

**NATIONWIDE-SOUTHEAST,
INC., et al.,**

Defendants.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge J. Clay Fuller’s Final Report and Recommendation [4] (“R&R”), recommending this action be dismissed for failure to abide by a lawful order of the Court.

I. BACKGROUND

On November 8, 2016, Plaintiff Rodney Davis (“Plaintiff”) filed a complaint for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* ([1]). Plaintiff did not provide proof of service of process on Defendants within the 90-day timeframe allowed by Rule 4(m) of the Federal Rules of Civil Procedure. On February 7, 2017, the Magistrate Judge directed Plaintiff to “either submit documentation that service was waived or timely effectuated [on Defendants] or to show cause, within 14 days from the date of entry of this Order,

why the complaint should not be dismissed without prejudice for failure to serve Defendants within 90 days of filing of the complaint.” (February 7th Order [2] at 1-2). Plaintiff did not respond to the February 7th Order.

On February 22, 2017, the Magistrate Judge issued another order directing Plaintiff to comply with the February 7th Order “by submitting documentation that service was waived or timely effectuated and show cause no later than 14 days from the date of entry of this Order why the complaint should not be dismissed for failure to serve Defendants and comply with the Court’s Orders.” (February 22nd Order [3] at 2). The Magistrate Judge warned Plaintiff that failure to comply with a lawful order of the court may result in dismissal of this action. (Id.). Plaintiff did not respond to the February 22nd Order.

On March 9, 2017, the Magistrate Judge issued his R&R. In it, he recommends that the Court dismiss this action for Plaintiff’s failure to comply with the February 7th Order and February 22nd Order. Plaintiff did not file any objections to the R&R, and has not otherwise taken any action in this matter.

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), cert. denied, 459 U.S. 1112 (1983). No party objects to the R&R, and the Court thus conducts a plain error review of the record. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

B. Analysis

Under Local Rule 41.3(A)(2), “[t]he court may, with or without notice to the parties, dismiss a civil case for want of prosecution if: . . . [a] plaintiff . . . shall, after notice, . . . fail or refuse to obey a lawful order of the court in the case.” L.R. 41.3(A)(2), NDGa.

Plaintiff failed to comply with the February 7th Order and February 22nd Order after being advised that failure to comply with these orders may result in the dismissal of this action. The Magistrate Judge recommends this action be dismissed for Plaintiff's failure to comply with the Court's orders. The Court finds no plain error in this finding and recommendation. Slay, 714 F.2d at 1095. Accordingly, this action is dismissed pursuant to Local Rule 41.3(A)(2).


III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge J. Clay Fuller's Final Report and Recommendation [4] is **ADOPTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED WITHOUT PREJUDICE** pursuant to Local Rule 41.3(A)(2) for failure to comply with a lawful order of the Court.

SO ORDERED this 29th day of March, 2017.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE