

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RODNEY DEES,

Plaintiff,

v.

Case No. 11-cv-893-JPG

CIERRA SIMPSON, DANIELLE
GOODWIN, ERIC FORT, CURTIS MOORE,
MICHAEL MCCLELLAND, ERIC PLOTT,
and CHRISTOPHER PHEMISTER,

Defendants.

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation (“R & R”) (Doc. 53) of Magistrate Judge Philip M. Frazier recommending that the Court grant defendants Michael McClelland and Cierra Simpson’s motion for summary judgment (Doc. 46), dismiss McClelland, dismiss defendant Eric Fort pursuant to Federal Rule of Civil Procedure 4(m), dismiss Count One, and dismiss the remainder of this case for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. The Court has discretion to conduct a new hearing and may consider the record before the magistrate judge anew or receive any further evidence deemed necessary. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Court notes that Dees filed a response (Doc. 54) to defendants McClelland and Simpson’s motion for summary judgment on July 8, 2013. The motion is undated; however, the

simultaneously filed declaration is dated July 4, 2013. Dees' response was due on May 2, 2013. He did not file a motion for an extension of time and offers no reason for filing his response over two months late. Accordingly, pursuant to Local Rule 7.1, the Court construes Dees' failure to file a timely response as an admission of the merits of defendants' motion for summary judgment. *See* Local Rule 7.1(c) (requiring a response to a motion for summary judgment be filed 30 days after service of the motion and stating a failure to timely respond may be deemed an admission of the merits of the motion); *see also Tobel v. City of Hammond*, 94 F.3d 360, 362 (7th Cir. 1996) ("[T]he district court clearly has authority to enforce strictly its Local Rules, even if a default results.").

In addition to failing to timely respond to the motion for summary judgment, Dees has failed to object to the R & R. The Court has reviewed the entire file and finds that the R & R is not clearly erroneous. For the foregoing reasons, the Court

- **ADOPTS** the R & R in its entirety (Doc. 53);
- **GRANTS** McClelland and Simpson's motion for summary judgment (Doc. 46);
- **DISMISSES** Fort from this case pursuant to Federal Rule of Civil Procedure 4(m);
- **DISMISSES** Count One;
- **DISMISSES** the remainder of this case for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b); and
- **DIRECTS** the Clerk of Court to enter judgment accordingly.

IT IS SO ORDERED.

DATED: July 11, 2013

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE