

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

TRACY RHINE,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 12-CV- 0211-MJR-SCW
)	
ZELDA BELL, LT KIRBY, OFFICER)	
ROBINSON-TAYLOR, AND ROSALIND)	
ROBINSON,)	
)	
Defendants.)	
)	
)	

MEMORANDUM AND ORDER

REAGAN, District Judge:

This matter is before the Court on the Report and Recommendation of United States magistrate Judge Stephen C. Williams (Doc. 51), recommending that Defendants’ oral motion to dismiss for failure to prosecute be granted, or alternatively, that Defendants’ Motion for Summary Judgment be granted and the case be dismissed with prejudice.

On March 8, 2012, Plaintiff filed her *pro se* Complaint while incarcerated at the Hazelton Secure Family Facility. Plaintiff’s claims of excessive force, deliberate indifference to a serious medical need, failure to protect and conditions of confinement survived threshold review (Docs. 11, 14). Defendants filed a Motion to Dismiss, or in

the alternative, Motion for Summary Judgment based on failure to exhaust administrative remedies on January 25, 2013 (Doc. 34). Plaintiff filed a response to the motion on February 14, 2013 (Doc. 38).

On May 10, 2013, the Court set a hearing on Defendants' Motion to Dismiss, or in the alternative, Motion for Summary Judgment to take place June 3, 2013 at 9:30 a.m. The Court sent notice of this hearing to Plaintiff at her last known address, which is 2515 Inwood Rd, #115, Dallas, TX 75235 (Doc. 41). Plaintiff last updated the Court with this address on March 21, 2013, after she was released from prison. The Notice stated that Plaintiff's attendance at the hearing was mandatory and that failure to appear may result in dismissal (Doc. 46). Plaintiff did not appear at the hearing. At that time, Defendants made an oral Motion to Dismiss for Lack of Prosecution under FED. R. CIV. P. 41 (Doc. 47).

Magistrate Judge Williams' Report recommends granting Defendants' oral motion (Doc. 47) because Plaintiff, despite receiving specific warnings that her case could be dismissed, failed to appear at the hearing. Judge Williams further noted that Plaintiff had previously fulfilled her obligations to keep the Court informed of her whereabouts, and her mail has not been returned "undeliverable" from the aforementioned address.

Where timely objections are filed, this Court must undertake a *de novo* review of the Report and Recommendation. **28 U.S.C. § 636(b)(1)(B), (C); FED. R. CIV. P. 72(b);**

SDIL-LR 73.1(b); *Harper v. City of Chicago Heights*, 824 F. Supp. 786, 788 (N.D. Ill. 1993); *see also Govas v. Chalmers*, 965 F.2d 298, 301 (7th Cir. 1992). The Court “may accept, reject or modify the magistrate judge’s recommended decision.” *Harper*, 824 F. Supp. at 788. In making this determination, the Court must look at all of the evidence contained in the record and “give ‘fresh consideration to those issues to which specific objections have been made.’” *Id.*, quoting 12 Charles Alan Wright et al., *Federal Practice and Procedure* § 3076.8, at p. 55 (1st ed. 1973) (1992 Pocket Part).

However, where neither timely nor specific objections to the Report and Recommendation are made, pursuant to 28 U.S.C. § 636(b), this Court need not conduct a *de novo* review of the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985). While a *de novo* review is not required here, the Court has considered the evidence and fully agrees with the findings, analysis, and conclusions of Magistrate Judge Williams. The record indicates that Plaintiff should have been on notice of the hearing, as well as the potential repercussions for her failure to attend, and thus the undersigned District Judge agrees that a dismissal with prejudice is warranted. Further, the undersigned District Judge agrees with Magistrate Judge Williams’ assessment that the record does not support a finding in Plaintiff’s favor, irrespective of her failure to appear at the hearing, as she has not submitted any evidence in support of her arguments for the Court to consider.

The Court **ADOPTS** Magistrate Judge Williams’ Report and Recommendation

and **GRANTS** Defendants' oral motion for dismissal pursuant to Rule 41 (Doc. 47). The case is **DISMISSED with prejudice** and all pending motions are **DENIED as moot**.

IT IS SO ORDERED.

DATED: August 13, 2013

s/ Michael J. Reagan _____
MICHAEL J. REAGAN
United States District Judge