

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

ANDREW LAMON,

Plaintiff,

vs.

DR. ALFONSO DAVID,

Defendant.

Case No. 13-cv-1247-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation (“R & R”) (Doc. 18) of Magistrate Judge Philip M. Frazier recommending this Court dismiss this case for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff Andrew Lamon filed an objection to the R & R. For the following reasons, the Court rejects the R & R.

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). Because Lamon filed an objection to the R & R, the Court will undertake a *de novo* review.

On January 13, 2014, this Court entered an order directing Lamon to make certain payments on the filing fee assessed in this case (Doc. 8). Lamon failed to make those payments, and Magistrate Judge Frazier entered a show cause order directing Lamon to show cause on or

before April 4, 2014, why this case should not be dismissed for failure to pay the initial partial filing fee. Lamon failed to respond to Magistrate Judge Frazier's show cause order. On May 6, 2014, Magistrate Judge Frazier entered his R & R recommending this case be dismissed for failure to prosecute citing Lamon's failure to respond to the show cause order.

On May 16, 2014, Lamon filed an objection to the R & R. He does not explain why he failed to respond to Magistrate Judge Frazier's R & R or why he failed to pay the filing fee as directed. Rather, Lamon forwarded the \$10.07 initial partial filing fee and asked that the case not be dismissed. The R & R, however, recommends that his case be dismissed for failing to respond to a show cause order, not simply for his failure to pay the filing fee. Lamon has offered no reason for his failure to respond to Magistrate Judge Frazier's show cause order even after Magistrate Judge Frazier recommended this case be dismissed for Lamon's failure to respond to the show cause order. In this instance, the Court will reject the R & R and allow Lamon's case to proceed. However, the Court warns Lamon that in the future his case may be subject to dismissal for failure to respond to a court order.

Accordingly, the Court **REJECTS** the R & R (Doc. 18) and **REFERS** this case to Magistrate Judge Frazier for further proceedings.

IT IS SO ORDERED.

DATED: July 16, 2014

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