

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

LARRY HARRIS, #N57672,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 14-CV-498-SMY-RJD
)	
KIM BUTLER, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on Defendant Dr. Robert Shearing’s (“Dr. Shearing”) Motion for Reconsideration of Magistrate Judge Frazier’s Order denying his Motion to Set Aside Entry of Default (Doc. 145). Plaintiff filed a response (Doc. 155).

Plaintiff filed his Amended Complaint on May 19, 2014 (Doc. 5). Summons was issued for Dr. Shearing on June 13, 2014 (Doc. 17). Service was achieved for Dr. Shearing by serving his daughter on June 25, 2014 (Doc. 29). Thus, Dr. Shearing was required to file an Answer or otherwise respond on or before July 16, 2014. He failed to do so.

Plaintiff moved for entry of default on October 15, 2015 (Doc. 92) and the Clerk entered default on October 16, 2015 (Doc. 93). Dr. Shearing filed a motion to set aside the entry of default and for leave to file an answer on November 17, 2015 (Doc. 103). Dr. Shearing now asks the Court to reconsider Magistrate Judge Frazier’s Order denying that motion (Doc. 144).

“The court may set aside an entry of default for good cause[.]” Fed. R. Civ. P. 55(c). “A party seeking to vacate an entry of default prior to the entry of final judgment must show: (1) good cause for the default; (2) quick action to correct it; and (3) a meritorious defense to the complaint.” Cracco v. Vitran Exp., Inc., 559 F.3d 625, 630–31 (7th Cir. 2009) (quotations

omitted). The Seventh Circuit maintains a “policy of favoring trial on the merits over default judgment.” Id.

Dr. Shearing’s failure to file a timely Answer to Plaintiff’s Amended Complaint was inadvertent which, under the applicable circumstances, constitutes good cause. Service of the Amended Complaint was made upon Dr. Shearing’s 16 year old daughter who at the time, was living with Dr. Shearing’s wife at an address where Dr. Shearing had not lived since 2011. Dr. Shearing asserts that his daughter never notified him of the summons and that he was wholly unaware of the lawsuit until contacted by his attorney in November 2015. Further, Dr. Shearing acted quickly to set aside the entry of default – he filed his motion to set aside the entry of default and for leave to file an answer the same day he learned of the lawsuit.

The Court also finds that Dr. Shearing has a meritorious defense to Plaintiff’s claims. Plaintiff alleges that Dr. Shearing retaliated against him for filing lawsuits against prison officials by withholding a soy-free diet. The Amended Complaint further alleges that Dr. Shearing was deliberately indifferent to Plaintiff’s medical needs regarding his soy-free diet. Given the required elements and Plaintiff’s burden of proof, both the retaliation and deliberate indifference claims are defensible. See, for example, *Harris v. Brown, et al.*, No. 07-CV-3225, 2014 WL 4948229, at *1 (C.D. Ill. Sept. 30, 2014).

Accordingly, Defendant Dr. Robert Shearing’s Motion for Reconsideration (Doc. 145) is **GRANTED** and his Motion to Set Aside Entry of Default and Leave to File an Answer (Doc. 103) is **GRANTED**. Defendant Shearing shall file his answer to Plaintiff’s Amended Complaint within 14 days of the entry of this Order. Defendant’s Motion for Oral Argument (Doc. 150) is **DENIED as MOOT**. Plaintiff’s Motion for Default Judgment as to Defendant Dr. Shearing (Doc. 91) is **DENIED**.

IT IS SO ORDERED.

DATED: April 3, 2017

s/ Staci M. Yandle
STACI M. YANDLE
United States District Judge