

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

<b>GILBERT CARDENAS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 15-cv-1191-MJR-SCW</b>
	)	
<b>DR. TARIQ, and</b>	)	
<b>LEAH HAMMELL,</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER ADOPTING R&R AND  
DISMISSING CASE FOR WANT OF PROSECUTION**

**REAGAN, Chief Judge:**

Two years ago, Gilbert Cardenas filed a pro se lawsuit in this Court under 42 U.S.C. 1983, alleging deprivations of his federally-secured constitutional rights. On preliminary review of the complaint under 28 U.S.C. 1915(e), the undersigned dismissed the claims against two of four Defendants – STA Kelley and Laurie Irose – without prejudice. The lawsuit proceeded against the remaining two Defendants – Dr. Tariq and Leah Hammell. An answer was filed, motions were ruled on, a discovery schedule was entered, trial was set.

In early August 2017, Judge Williams set a status conference for August 8, 2017. Defendants Tariq and Hammell appeared through counsel, but Plaintiff’s recruited counsel advised the Court that he had not been able to locate or communicate with Plaintiff. Judge Williams ordered Plaintiff to show cause by September 1, 2017 why this case ought not be dismissed for want of prosecution. Judge Williams also set an in-court hearing for September 1, 2017 (*see* Doc. 35).

Plaintiff did not appear at the September 1<sup>st</sup> hearing, and his recruited counsel reported that he had not been able to reach Plaintiff. The show cause hearing was reset for September 8, 2017. When Plaintiff again failed to appear for that hearing and his recruited counsel again reported that his attempts to communicate with Plaintiff had all failed, Defendants moved to dismiss this case for want of prosecution (*see* Docs. 40-41).

Now before the Court is a Report and Recommendation (R&R) issued by Magistrate Judge Stephen C. Williams on September 13, 2017 (Doc. 42), which recommends that the undersigned District Judge *grant* Defendants' September 8, 2017 oral motion to dismiss this case for lack of prosecution. The R&R notes, *inter alia*, that Plaintiff "appears to have no interest in prosecuting this suit," has "failed to notify his attorney of his whereabouts," and has failed to return calls/communications when his lawyer contacted him. He also failed to keep the clerk's office apprised of any address change, despite being plainly warned that failure to do so might result in dismissal of this case (*see* Doc. 9, p. 9).

Although Rule 41(b) dismissals for failure to prosecute a case (or failure to comply with a court order or the Federal Rules of Civil Procedure) typically are made with prejudice, Judge Williams recommends that the undersigned dismiss this case **without** prejudice, given Plaintiff's "detention in a mental health facility, and the circumstances leading to this recommended disposition" (Doc. 42, p. 3).

The R&R plainly stated that any objection must be filed by October 2, 2017. That date has passed, and no objection was filed. The undersigned need not conduct *de novo* review of the R&R. **28 U.S.C. 636(b)(1)(C)(A judge shall make a de novo**

determination of those portions of the report or specified proposed findings or recommendations to which objection is made.); *Thomas v. Arn*, 474 U.S. 140 (1985); *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 741 (7th Cir. 1999); *Video Views Inc., v. Studio 21, Ltd.*, 797 F.2d 538 (7th Cir. 1986).

The Court **ADOPTS** Judge Williams' Report and Recommendation (Doc. 42) in its entirety, **GRANTS** Defendants' oral motion to dismiss (Doc. 41), and **DISMISSES** this case without prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute. All claims and Defendants having been dismissed without prejudice (in the threshold Order and this Order), the Clerk's Office shall close the case.

IT IS SO ORDERED.

DATED October 3, 2017.

*s/Michael J. Reagan*  
Michael J. Reagan  
United States District Judge