

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MICHAEL MALOTT,

Plaintiff,

Case No. 16-cv-13014

v

Honorable Thomas L. Ludington

RANDALL HAAS, *et al.*,

Magistrate Judge David R. Grand

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION, DISMISSING CASE,
AND DENYING MOTION FOR SUMMARY JUDGMENT AS MOOT**

On August 17, 2016, Plaintiff Micahel Malott initiated the above-captioned matter by filing his *pro se* complaint against Defendants Randall Haas, George Stephanson, “Inspector Steece”, and “Mr. Robinson.” *See* Compl., ECF No. 1. Plaintiff alleges that, by ignoring his request for protection, Defendants are responsible for an assault he was subjected to by fellow inmates. *Id.* The matter was referred to Magistrate Judge David R. Grand for report and recommendation.

After Plaintiff struggled to serve Defendant Robinson, MDOC eventually furnished a letter to the Clerk’s Office representing that Robinson was “now deceased.” *See* ECF No. 27. As a result, on January 4, 2017 Magistrate Judge Grand directed Plaintiff to show cause as to why his complain should not be dismissed as to Defendant Robinson. *See* ECF No. 28. Plaintiff did not respond as directed.

On December 12, 2016 Defendants Haas, Steece, and Stephanson filed a motion for summary judgment. *See* ECF No. 24. The following day, the magistrate issued an order directing Plaintiff to respond to the summary judgment order on or before January 6, 2017. *See*

ECF No. 26. After Plaintiff failed to respond, on January 13, 2017, the magistrate directed Plaintiff to show cause as to why his case should not be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See* ECF No. 29. Plaintiff again did not respond as directed.

On February 8, 2017 the magistrate judge issued his report and recommendation, recommending that Plaintiff's case be dismissed for failure to prosecute. *See* ECF No. 30. Although the magistrate judge's report explicitly states that the parties could object to and seek review of the recommendation within fourteen days of service of the report, Plaintiff did not file any objections within that time period. However, over thirty days after the issuance of the magistrate judge's report, on March 17, 2017, Plaintiff Malott submitted a letter to the clerk's office claiming that officials at the Oaks Correctional Facility conspired to prevent him from accessing the Court in retaliation for his filing of the lawsuit. *See* ECF No. 31. Plaintiff represented that he had since been transferred to the Gus Harrison Correctional Facility, and requested an update on the status of his case. As a result, Plaintiff's address was updated and his deadline to object to the magistrate judge's report was extended to April 12, 2017. *See* ECF No. 32.

On April 4, 2017 Plaintiff submitted a response in which he notes that he is dealing with his Court access issue through the prison's administrative grievance process. He also represents that he does not object to the dismissal of his case. *See* ECF No. 34. The election not to file objections to the magistrate judge's report releases the Court from its duty to independently review the record, and waives any further right to appeal. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 30, is **ADOPTED**.

It is further **ORDERED** that Plaintiff's complaint, ECF No. 1, is **DISMISSED**.

It is further **ORDERED** that Defendant's motion for summary judgment, ECF No. 24, is **DENIED as moot**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: April 5, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on April 5, 2017.

s/Kelly Winslow for
MICHAEL A. SIAN, Case Manager