UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORRIS WEATHERSPOON,

Plaintiff,

Case No. 14-cv-12789
Hon. Matthew F. Leitman

v.

GEORGE LNU, *et al.*

Defendants.
_____/

ORDER (1) OVERRULING PLAINTIFF'S OBJECTIONS (ECF #114); (2) ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (ECF #107) AS THE ORDER OF THE COURT; AND (3) DISMISSING WITHOUT PREJUDICE PLAINTIFF'S CLAIMS AGAINST DEFENDANT WOERN

Plaintiff Morris Weatherspoon ("Weatherspoon") is an inmate in the custody of the Michigan Department of Corrections (the "MDOC"). In this action, Weatherspoon alleges, among other things, that a Defendant he identifies only as "Woern" violated his Eighth and Fourteenth Amendment rights by acting with deliberate indifference to his medical needs. (*See* Compl., ECF #1 at ¶ 12, Pg. ID 4.) The Court previously granted Weatherspoon's request to proceed *in forma pauperis* and repeatedly directed him to provide an address for Woern at which the United States Marshals could serve Woern with the Complaint. (*See, e.g.*, ECF #101.) The Court also directed the MDOC, on two separate occasions, to provide address information for Woern. (*See, e.g.*, ECF ## 40, 88.) On December 21,

2015, the MDOC informed the Court that it no longer employed Woern and that it had "no address [for Woern] on file." (ECF #98 at 1, Pg. ID 728.)

On January 11, 2016, the Magistrate Judge ordered Weatherspoon to show cause why the Court should not dismiss his claims against Woern due to the inability to serve Woern with the Complaint (the "Show Cause Order"). (*See* ECF #101.) Weatherspoon responded to the Show Cause Order on January 29, 2016. (*See* ECF #104.) He argued that despite his inability to serve Woern, his claims against Woern should not be dismissed. (*See id.*)

The Magistrate Judge has now issued a Report and Recommendation ("R&R") in which he recommends that the Court dismiss the claims against Woern due to Weatherspoon's inability to timely serve Woern with the Complaint. (*See* ECF # 107.) Weatherspoon has objected to the R&R. (*See* ECF #114.) He insists that the MDOC is intentionally withholding Woern's address information in order to conceal Woern's alleged misconduct. (*See id.*)

Under Federal Rule of Civil Procedure 4(m), a district court must dismiss an action without prejudice if the plaintiff fails to properly serve a defendant within 90 days of filing the complaint (and fails to establish good cause for the failure). Because Weatherspoon is proceeding *in forma pauperis* in this action (*see* ECF #4), he was required to provide a correct address to the United States Marshals to effectuate service on Defendant Woern. But Weatherspoon has failed to provide

the United States Marshals or the Court with a current address for Defendant Woern for over 18 months. And Weatherspoon has provided no evidence whatsoever that the MDOC has refused to provide Defendant Woern's address as part of a cover up. Accordingly, **IT IS HEREBY ORDERED** that Weatherspoon's objections (ECF #114) to the R&R are **OVERRULED.**

IT IS FURTHER ORDERED THAT the R&R (ECF #107) is **ADOPTED** as the Order of the Court and that Weatherspoon's claims against Woern are **DISMISSED WITHOUT PREJUDICE.**

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: March 30, 2016

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on March 30, 2016, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(313) 234-5113