

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT LEE CHILDRESS,

Plaintiff,

Civil Case No. 10-11008

v.

HON. MARK A. GOLDSMITH

MICHAEL MICHALKE,

Defendant.

_____/

ORDER (1) VACATING THE COURT'S ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (Dkt. 203) AND CORRESPONDING JUDGMENT (Dkt. 204) and (2) PROVIDING PLAINTIFF ADDITIONAL TIME TO FILE OBJECTIONS

The matter presently before the Court is Plaintiff's request for "Relief from Judgment & Order Pursuant to Fed. R. Civ. P. 59(e)" (Dkt. 207). In his request, Plaintiff states that he never received the Report and Recommendation (R&R) of Magistrate Judge Mark A. Randon, issued on July 19, 2013. Plaintiff states further that, although he sent the Clerk a change of address notification, the Clerk failed to update the docket. Plaintiff requests that the Court vacate the judgment and order adopting the R&R, re-mail him the R&R, provide him 30 days to file objections, and appoint counsel for the limited purpose of sending correspondence to the Court.

In considering Plaintiff's request, the Court construes it as a motion for relief from judgment made pursuant to Rule 60. The Court may relieve a party from a final judgment and order arising from "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). Here, the docket reflects that the Court attempted to mail Plaintiff the R&R twice, but that both attempts failed. 7/30/2013 Notice (Dkt. 202), 8/13/2013 Notice (Dkt. 205). The docket also indicates that the Clerk received Plaintiff's change of address

notification on July 10, 2013, but did not update Plaintiff's address in the instant case until August 20, 2013, after the Court had adopted the R&R. See Pl.'s Notice (Dkt. 206). Because the Clerk failed to accurately update Plaintiff's change of address, the Court could not send the R&R to Plaintiff's current address in order for him to lodge timely objections. The Court holds that this constituted a mistake warranting relief under Rule 60.

Accordingly, the Court will grant Plaintiff's request in part by vacating its judgment and order and re-sending him the R&R. However, the Court shall provide Plaintiff until November 20, 2013 to file objections, as provided for in 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2), and deny his request to appoint counsel for the sole purpose of corresponding with the Court.

SO ORDERED.

Dated: November 5, 2013
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on November 5, 2013.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager