

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LATAUSHA SIMMONS,

Plaintiff,

Case No. 18-cv-14058

Hon. Matthew F. Leitman

v.

HENRY FORD HEALTH SYSTEM *et al.*,

Defendants.

**ORDER (1) SUSTAINING PLAINTIFF’S OBJECTIONS (ECF No. 51) TO
REPORT AND RECOMMENDATION (ECF No. 50) AND (2) DENYING
DEFENDANTS’ MOTION TO DISMISS (ECF No. 44)**

In this action, Plaintiff Latausha Simmons alleges that the Defendants – Henry Ford Health System and others – violated her constitutional rights and committed common law torts against her. (*See* Am. Compl., ECF No. 21.) Defendants filed a motion to dismiss due to Simmons’ failure to prosecute. (*See* Mot., ECF No. 44.) In the motion, the Defendants argued, among other things, that Simmons had failed to complete signed medical authorizations, failed to file a preliminary witness list, and failed to “cooperate with discovery matters.” (*Id.*, PageID.411-412.)

The motion to dismiss was referred to the assigned Magistrate Judge. (*See* Order of Referral, ECF No. 9.) Simmons did not respond to the motion, and the Magistrate Judge issued a report and recommendation in which she recommended that the Court grant the motion and dismiss Simmons’ claims (the “R&R”). (*See*

R&R, ECF No. 50.) Simmons has now filed objections to the R&R. (*See* Objections, ECF No. 50.) In the objections, Simmons insists she has tried to prosecute her claims and has cooperated with discovery. (*See id.*) The Court held a telephonic hearing on the objections on March 30, 2021. (*See* Order, ECF No. 55.)

As the Court explained during the motion hearing, it understands why the Magistrate Judge, based on the record and information she had at the time, recommended granting Defendants' motion to dismiss. Indeed, if faced with the same record, this Court likely would have come to the same conclusion. But the Court now has additional information that the Magistrate Judge did not have when she issued the R&R. Namely, at the hearing on Simmons' objections, Simmons swore, under oath, that she (1) responded timely and fully to Defendants' initial written discovery requests, (2) attempted to prosecute her action by, among other things, sending discovery requests to Defendants, (3) did not respond to the motion to dismiss because she never received that filing, and (4) completed and returned to defense counsel all of the medical authorization forms she received from the Defendants. In addition, during the hearing, the Defendants were unable to specifically identify any material litigation-related prejudice that they would suffer if they were required to defend this case on the merits.

Based on these representations at the hearing, and given both the unusual posture of this case and the preference for deciding cases on their merits, the Court

will not dismiss Simmons' claims for failure to prosecute. Accordingly, for the reasons explained above, and the reasons explained during the hearing, Simmons' objections to the R&R (ECF No. 51) are **SUSTAINED** and Defendants' motion to dismiss (ECF No. 44) is **DENIED**. Again, the court expresses no disagreement with the substance of the Magistrate Judge's R&R. The Court's ruling today is based on information that was not available to the Magistrate Judge. Finally, as explained during the hearing, Defendants shall provide Simmons with new medical authorization forms by no later than **April 5, 2021**, and Simmons shall complete and return those forms by no later than **April 14, 2021**.

This action shall now return to the Magistrate Judge for entry of a revised scheduling order (including a new reasonable period for completing discovery) and completion of all pre-trial matters.

IT IS SO ORDERED.

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

Dated: March 31, 2021

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on March 31, 2021, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
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