

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JENNIE DEYOUNG-EISENHARDT,

Plaintiff,

Hon. Gordon J. Quist

v.

Case No. 1:09-cv-00174

MCDONALD'S CORPORATION,

Defendant.

REPORT AND RECOMMENDATION THAT PLAINTIFF'S COMPLAINT BE DISMISSED

On December 8, 2009, the Court filed an order setting a Settlement Conference in this matter for January 6, 2010 at 2:00 p.m. and a notice setting a motion to compel for hearing for the same date and time. On December 9, 2009, copies of the order and the notice were sent to Plaintiff. On December 30, 2009, an additional motion was set for hearing at the same date and time, and that notice was mailed to Plaintiff on December 31, 2009. On January 5, 2010, after Defendant's representative was already en route to the conference, Plaintiff filed a request that the conference be cancelled and rescheduled in Kalamazoo. That request was denied as untimely. On January 6, 2010, at the scheduled time for the conference and hearing, the court, counsel for Defendant, and Defendant's representative with authority to settle the matter were present but Plaintiff did not appear. Nor did Plaintiff contact the court. After waiting a significant amount of time, the court noted on the record the failure of Plaintiff to appear, reviewed the two motions to compel, granted both motions, and stated that an Order to Show Cause would issue.

Plaintiff was ordered to appear on January 19, 2010 at 11:00 a.m. to show cause why this matter should not be dismissed pursuant to Fed. R. Civ. P. 41(b) and W.D.Mich. L.Civ.R. 41.1

for want of prosecution and failure to comply with the rules and orders of this court (Dkt. 29). Counsel for Defendant was not required to appear for the show cause hearing but did file a brief stating that subsequent to the date of the scheduled settlement conference and motion hearing: 1) Plaintiff did not respond to discovery as ordered; and 2) Plaintiff did not appear for her duly noticed deposition.

Plaintiff did not appear at the January 19, 2010 show cause hearing; nor did she contact the court regarding her failure to appear.

As such, given Plaintiff's failures to appear as ordered, her failure to cooperate in discovery, and her repeated failure to comply with orders of this court, the undersigned hereby recommends that this matter be dismissed pursuant to Fed. R. Civ. P. 41(b) and W.D.Mich. L.Civ.R. 41.1 for want of prosecution and failure to comply with the rules and orders of this court. Timely objections to this Report and Recommendation shall be considered Plaintiff's final opportunity to show cause why this matter should not be dismissed.

Respectfully submitted,

Date: January 27, 2010

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).