

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

JOSHUA MULLINS

PLAINTIFF

V.

NO. 3:16-CV-5-DMB-JMV

UNION COUNTY SHERIFF DEPT.; et al.

DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

This prisoner civil rights action is before the Court on the motion to dismiss filed by the defendants, Doc. #23; and the Report and Recommendation of United States Magistrate Judge Jane M. Virden, which recommends that the motion to dismiss be granted, Doc. #24.

**I
Procedural History**

On or about December 28, 2015, Joshua Mullins, a prisoner at the Union County Jail, filed a complaint in this Court against the Union County Sheriff's Department; Jimmy Edwards, the Sheriff; Johnny Bell, a jail administrator; and Michael Cortez, an assistant jail administrator. Doc. #1. In his complaint, Mullins alleges that the individual defendants failed to provide him adequate medical treatment for an eye condition. *Id.*

On March 31, 2016, Mullins informed the Court that he had been moved to the Tippah County Jail. Doc. #10. Approximately a month later, on April 26, 2016, United States Magistrate Judge Jane M. Virden issued an order setting a *Spears* hearing which provided, in relevant part, "plaintiff is warned that failure to keep the court informed of his current address may result in the dismissal of this lawsuit." Doc. #12 at 2.

On August 19, 2016, Judge Virden issued a scheduling order for this action. Doc. #20. The same day, a copy of the order was sent to Mullins at the Tippah County Jail.

Approximately one week later, on August 29, 2016, the mail sent to Mullins was returned as undeliverable. Doc. #22. The returned mail was accompanied by a letter from the Tippah County Sheriff's Office stating that "Mr. Mullins is an escaped convict at the moment" Doc. #22-1.

On November 29, 2016, the defendants filed a motion seeking dismissal of this action on the grounds that Mullins' escape from prison amounts to a failure to prosecute his claims and failure to follow case deadlines. Doc. #23.

On May 8, 2017, Judge Virden issued a Report and Recommendation recommending that the defendants' motion to dismiss be granted. Doc. #24. A copy of the Report and Recommendation was mailed to Mullins at his Tippah County Jail address.

No party has filed objections to the Report and Recommendation.

II **Analysis**

Where objections to a report and recommendation have been filed, a court must conduct a "de novo review of those portions of the ... report and recommendation to which the Defendants specifically raised objections. With respect to those portions of the report and recommendation to which no objections were raised, the Court need only satisfy itself that there is no plain error on the face of the record." *Gauthier v. Union Pac. R.R. Co.*, 644 F.Supp.2d 824, 828 (E.D. Tex. 2009) (citing *Douglass v. United Serv. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996)).

The Court has reviewed the Report and Recommendation and found no plain error. Accordingly, it is **ORDERED**:

1. The Report and Recommendation [24] is **ADOPTED** as the order of the Court;
2. The defendants' motion to dismiss [23] is **GRANTED**; and

3. Mullins' claims against the defendants are **DISMISSED with prejudice** pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with a court order.

4. A final judgment consistent with this order will issue separately.

SO ORDERED, this 12th day of July, 2017.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE