

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

NIGELLUS DEVONTE DAVIS	§ § § § § § § §	PLAINTIFF
v.		Civil No. 1:19cv965-HSO-RPM
BILOXI POLICE DEPT.	§ § § § § § § §	DEFENDANT

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION [8] AND DISMISSING CASE WITHOUT PREJUDICE**

This matter comes before the Court on the Report and Recommendation [8] of United States Magistrate Judge Robert P. Myers, Jr., entered on March 9, 2021. The Magistrate Judge recommended that Plaintiff Nigellus Devonte Davis's Complaint [1] be dismissed without prejudice for failure to prosecute. R & R [8] at 2. Plaintiff Nigellus Devonte Davis has not objected to the Report and Recommendation [8] and the time for doing so has long passed.

After due consideration of the Report and Recommendation [8], the record in this case, and relevant legal authority, the Court finds that the Magistrate Judge's Report and Recommendation [8] should be adopted as the finding of this Court and that Plaintiff Nigellus Devonte Davis's Complaint [1] should be dismissed without prejudice.

I. BACKGROUND

Pro se Plaintiff Nigellus Devonte Davis ("Plaintiff") filed this cause of action against Defendant Biloxi Police Department ("Defendant") on December 17, 2021. Compl. [1] at 1. In the Complaint [1], Plaintiff alleges that he was falsely arrested

“for hitting a [j]ackpot at golden nugget and it never paid me anything but 10 cents.” Compl. [1] at 3. Plaintiff allegedly called the Biloxi Police Department after hitting the “jackpot” at the Golden Nugget Casino and was thereafter subjected to a false arrest. *Id.* at 4. Plaintiff seeks \$500 million in damages, as well as “the whole company or shares and triple the money a [sic] unmark car.” *Id.* Plaintiff was granted leave to proceed *in forma pauperis*. Order [7].

On February 17, 2021, the Magistrate Judge noticed an in-person omnibus hearing scheduled for March 8, 2021, at 9:00 a.m. and mailed Plaintiff a copy of the notice to his address of record. Notice of Hr’g, Feb. 17, 2021. Plaintiff failed to appear at the omnibus hearing, *see* Min. Entry Mar. 8, 2021, and on March 9, 2021, the Magistrate Judge entered a Report and Recommendation [8], recommending that the case be dismissed without prejudice for Plaintiff’s failure to prosecute, R & R [8] at 2.

The Report and Recommendation was mailed to Plaintiff on March 9, 2021, at his address of record. Any objection to the Report and Recommendation [8] was due within fourteen (14) days of service, or no later than March 23, 2020. L.U. Civ. R. 72(a)(3). To date, Plaintiff has not filed any objection to the Magistrate Judge’s Report and Recommendation [8].

II. DISCUSSION

Where no party objects to a magistrate judge’s report and recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or

specified proposed findings and recommendations to which objection is made.”). Instead, the Court need only review the report and recommendation and determine whether it is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having conducted the required review, the Court finds that the Report and Recommendation [8] is neither clearly erroneous nor contrary to law, and that it should be adopted as the finding of the Court. This civil action will be dismissed without prejudice for Plaintiff’s failure to prosecute.

Under Rule 41(b), generally, dismissals are permitted only when “(1) there is a clear record of delay or contumacious conduct by the plaintiff, and (2) the district court has expressly determined that lesser sanctions would not prompt diligent prosecution, or the record shows that the district court employed lesser sanctions that proved to be futile.” *Campbell v. Wilkinson*, 988 F.3d 798, 802 (5th Cir. 2021) (quoting *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir. 1992)).

Plaintiff was given adequate notice of the omnibus hearing before the Magistrate Judge but failed to appear at the hearing or otherwise communicate with the Court regarding this matter. Indeed, Plaintiff has taken no action at all in this case, or otherwise communicated with the court since June 18, 2021. Such inaction represents a clear record of delay or contumacious conduct, and it is apparent that Plaintiff no longer wishes to pursue this lawsuit. The Court finds that a lesser sanction would not prompt diligent prosecution and thus dismissal without prejudice is warranted.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [8] of United States Magistrate Judge Robert P. Myers, Jr, entered on March 9, 2021, is **ADOPTED** in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, this civil action is **DISMISSED WITHOUT PREJUDICE** for Plaintiff's failure to prosecute. A separate final judgment will be entered pursuant to Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 8th day of October, 2021.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE