

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

FREDRICK LACHUN HARALSON

PLAINTIFF

V.

CIVIL ACTION NO. 3:09CV700 DPJ-FKB

SHERIFF MIKE LEE, ET AL.

DEFENDANTS

ORDER

This cause is before the Court on the Report and Recommendation of Magistrate Judge F. Keith Ball. Judge Ball recommended granting Defendants' motion to dismiss based on Plaintiff's failure to prosecute. Plaintiff filed an objection, in the form of a letter to the Court, expressing his desire to pursue this action and asking the Court not to dismiss his case.

On January 14, 2010, Plaintiff followed this Court's instructions and provided notice that his address had changed. However, Defendants attempted to mail various pleadings to the new address only to have them returned. This prompted Defendants' motion to dismiss filed just two months after they were served with a Summons and Complaint. Judge Ball then set an omnibus hearing, and Plaintiff failed to appear, leading the magistrate judge to recommend dismissal without prejudice.

In his objection to the Report and Recommendation, Plaintiff indicated that he is not represented by counsel and that he had not received prior mailings. The return address on his envelop reflected the same address he provided January 14, 2010, and he obviously received a copy of the Report and Recommendation. Although it is not clear why he did not receive prior mailings, it does not appear that Plaintiff violated the Court's order that he provide notice of any changes in address. The failure to provide this notice formed a primary basis for Defendants' motion. Moreover, although Plaintiff failed to appear at the omnibus hearing, it is not clear that

he received notice. Plaintiff has not otherwise failed to meet any deadlines, and no prejudice is apparent given the limited amount of time Defendants were in the case prior to moving to dismiss for lack of prosecution.

Based on Plaintiff's letter, which provided information not available to Judge Ball, the Court finds that the Report and Recommendation should not be adopted as the opinion of the Court. This case is remanded to the magistrate judge with instructions to reset an omnibus hearing in this matter. Plaintiff is strongly cautioned, however, that if his current address is not reliable, he should immediately provide another. Moreover, a failure to appear at the omnibus hearing, to keep the Court apprised of his current address, or to prosecute this matter will result in dismissal of this action.

SO ORDERED AND ADJUDGED this the 27th day of May, 2010.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE