

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SHAUN P. GARVEY,
Plaintiff,

v

CHILDTIME LEARNING CENTER,
Defendant.

**5:16-CV-1073
(TJM/ATB)**

THOMAS J. McAVOY,
Senior United States District Judge

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a report and recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). In his April 21, 2017 Order and Report-Recommendation, Magistrate Judge Baxter reviewed plaintiff's second amended complaint ("2nd AC")[dkt. # 13] pursuant to 28 U.S.C. § 1915 and recommended that the action be dismissed with prejudice for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). Dkt. # 14. Plaintiff failed to file timely objections. Although plaintiff filed late objections, Dkt. # 15, he fails to provide a sufficient excuse for this late filing.

II. DISCUSSION

The Court presumes familiarity with the procedural history of this case, including Magistrate Judge Baxter's two previous Order and Report-Recommendations, Dkt. # 5 & Dkt. # 9, and the Court's two previous decisions on these Order and Report-

Recommendations. Dkt. # 8 & Dkt. # 12.

Because Plaintiff failed to timely file objections or offer a sufficient excuse for his late filed objections,¹ the Court treats the April 21, 2017 Order and Report-Recommendation as unopposed. Doing so, and after examining the record, the Court finds that the April 21, 2017 Order and Report-Recommendation is not subject to attack for plain error or manifest injustice.

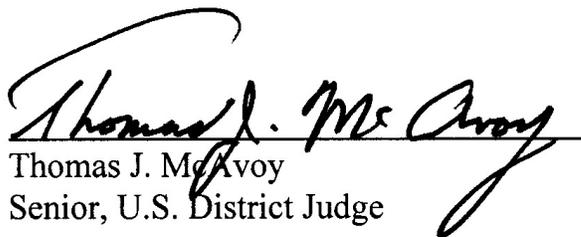
Even when considering plaintiff's late objections and conducting a *de novo* review of the issues raised by the objections, the Court accepts and adopts Magistrate Judge Baxter's recommendations for the reasons stated in his report.

III. CONCLUSION

For the reasons discussed above, the Court accepts and adopts Magistrate Judge Baxter's April 21, 2017 Order and Report-Recommendation (Dkt. # 14) in its entirety. Accordingly, this action is **DISMISSED with prejudice** for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii).

IT IS SO ORDERED.

Dated: June 9, 2017


Thomas J. McAvoy
Senior, U.S. District Judge

¹Plaintiff merely contends that he "sent the paperwork for objection to the wrong mailing address," but he neither indicates the address his objections were purportedly sent nor provides proof (such as an envelop stamped as returned by the U.S. Postal Service or an affidavit setting forth details of this allegedly mistaken mailing) supporting his contention.