

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
GENEVIEVE ZIETEK,

Plaintiff,

-against-

PINNACLE NURSING & REHAB CENTER,  
Defendant.

ANALISA TORRES, District Judge:

USDC SDNY  
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21 Civ. 5488 (AT)

**ORDER**

On October 7, 2022, the Honorable James L. Cott issued an order scheduling a competency hearing for October 27, 2022 (the “October 27 Competency Hearing”). ECF No. 66. On October 26, 2022, Defendant filed a letter it received from Plaintiff stating that Plaintiff did not intend to attend the October 27 Competency Hearing. ECF No. 69. Judge Cott issued an order that same day directing Plaintiff to attend the October 27 Competency Hearing and warning Plaintiff that failure to attend may result in dismissal of her case for failure to prosecute. ECF No. 70. Plaintiff did not attend the October 27 Competency Hearing. ECF No 72; Dkt. Entry 10/27/2022. On October 27, 2022, Judge Cott issued an order rescheduling the competency hearing for November 16, 2022 (the “Rescheduled Competency Hearing”). ECF No. 72. Judge Cott emphasized that if Plaintiff did not attend, her case may be dismissed for failure to prosecute. *Id.* at 3. Later that day, Plaintiff appealed Judge Cott’s order. ECF No. 75. On November 16, 2022, Defendant filed another letter it received from Plaintiff indicating that Plaintiff did not intend to attend the Rescheduled Competency Hearing. ECF No. 76. For the reasons stated below, Plaintiff’s appeal is DENIED, and Judge Cott’s order is AFFIRMED.

Scheduling orders are non-dispositive and, therefore, subject to the clearly erroneous standard of review. *See Pictometry Int’l Corp. v. Geospan Corp.*, No. 09 Civ. 6517, 2011 WL 13213624, at \*1 (W.D.N.Y. May 12, 2011) (citations omitted); *see also* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). The Court referred this action to Judge Cott for a determination of Plaintiff’s competency. ECF No. 42. Judge Cott therefore did not err in scheduling a competency hearing.

Plaintiff’s appeal is DENIED, and Judge Cott’s order is AFFIRMED. The Clerk of Court is directed to terminate the appeal at ECF No. 75, and to mail a copy of this order to Plaintiff *pro se*.

SO ORDERED.

Dated: November 18, 2022  
New York, New York



ANALISA TORRES  
United States District Judge