

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT SHAPIRO,

Plaintiff,

v.

DANIEL J. DAREL,

Defendant.

DECISION AND ORDER
17-CV-376-A

In this prisoner civil rights action commenced *pro se* by Plaintiff Robert Shapiro, a former inmate who was in the custody of the New York State Department of Corrections and Community Supervision at the time his claims arose, Plaintiff's Complaint alleges claims pursuant to 42 U.S.C. § 1983. After originally being referred to Magistrate Judge Hugh B. Scott pursuant to 28 U.S.C. § 636(b)(1) for the performance of pretrial proceedings, the case was reassigned to Magistrate Judge H. Kenneth Schroeder, Jr. Dkts. 27 & 56.

On August 4, 2023, Magistrate Judge Schroeder issued a Report, Recommendation and Order ("RR&O") recommending that Plaintiff's case be dismissed for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Dkt. 64.

Federal Rule of Civil Procedure 72(b)(3) provides, "[t]he district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Here, no objections to the RR&O have been filed. "When no timely objection is filed, the [C]ourt need only satisfy itself that there is no clear error

on the face of the record in order to accept the recommendation.” 1983 Advisory Committee Note to Fed. R. Civ. P. 72(b); see *Patton v. Ford Motor Co.*, 14-CV-0308-RJA-HBS, 2017 WL 2177621, 2017 U.S. Dist. LEXIS 76148, *5 (W.D.N.Y. May 18, 2017).

The Court finds no error with respect to Magistrate Judge Schroeder’s recommendation, and hereby adopts the RR&O in its entirety. The Court further finds that although Rule 41(b) does not explicitly address *sua sponte* dismissal for failure to prosecute, it is well settled that a district court may, “based on both its inherent authority and Rule 41(b) – dismiss an action *sua sponte* for failure to prosecute or failure to comply with a court order.” *Hall v. Oriska Corp Gen. Contr.*, 2022 U.S. App. LEXIS 33520, *5 (2d Cir. 2022).

As such, it is hereby

ORDERED that, for the reasons set forth in the RR&O and above, Plaintiff’s lawsuit is dismissed for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Clerk of the Court shall take all steps necessary to close the case.

IT IS SO ORDERED.

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: August 28, 2023
Buffalo, New York

