

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:13-CV-814-FL

ERIC M. McMILLIAN,)	
)	
Plaintiff,)	
)	
v.)	
)	
PAUL COUSINS, DR. HUNT, and N.C.)	
STATE UNIVERSITY,)	
)	
Defendants.)	

ORDER

Where order was entered March 11, 2014, allowing defendants up to and until March 24, 2014, within which to answer or otherwise respond to complaint, and no response had been made, the court ORDERED defendants March 28, 2014, to show cause for their failure to comply. It was noted that unless good cause was found for failure to respond, plaintiff may be directed to memorialize application for judgment.

On April 10, 2014, defendants made responsive showing, which refers to confusion and misunderstanding of counsel, as therein reported. (DE 36). Good cause having been shown, the court deems defendants' motion to dismiss and memorandum in support of defendants' motion to dismiss (DE 40, 39), also filed April 10, 2014, timely. In this respect that response (DE 36), which the clerk notes remains pending, is ALLOWED.

Plaintiff's response to the instant motion has been lodged on the docket also as a motion. (DE 46). In that cursory motion to strike defendants' motion to dismiss, plaintiff's brief reference to the merits of the motion under Rule 12 refers only to a lack of any material issue: "Defendants

have raised absolutely no material issue by which this case should be dismissed...”

The court has carefully reviewed the grounds on which defendants assert this action should be dismissed, pursuant to Rule 12 of the Federal Rules of Civil Procedure, and plaintiff’s response. Notwithstanding his objection, the grounds offered in furtherance of dismissal of the action against the individual defendants, Paul Cousins and Dr. Hunt, are well-considered. For reasons given by defendants, plaintiff’s action must be and is dismissed. Plaintiff has failed to state a claim upon which relief can be granted.

To the extent that plaintiff purports to bring this action against N.C. State University, plaintiff has failed to effect proper service on this defendant. Under the circumstances presented, this basis for dismissal, as argued by defendants, warrants that the action be dismissed also against N.C. State University. The clerk is directed to close the file.

SO ORDERED, this the 15th day of July, 2014.

A handwritten signature in black ink that reads "Louise W. Flanagan". The signature is written in a cursive, flowing style.

LOUISE W. FLANAGAN
United States District Judge