

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:22-cv-00454-MR

GERALD DAMONE HOPPER,)
)
Plaintiff,)
)
vs.)
)
)
)
GARRY L. MCFADDEN, et al.,)
)
Defendants.)
_____)

ORDER

THIS MATTER is before the Court Plaintiff’s pending motion. [Doc. 41].

On November 9, 2022, Plaintiff’s Amended Complaint pursuant to 42 U.S.C. § 1983 passed initial review against Defendants Garry L. McFadden, FNU LeBliss, Destiny Walters, and Roshaunda Friday in accordance with the Court’s Order. [Docs. 11, 17]. On February 28, 2023, Defendant Friday answered and moved to dismiss Plaintiff’s Amended Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. [Docs. 30, 31]. The Court issued a Roseboro Order advising Plaintiff of his duty to respond and giving him 30 days – until April 5, 2023 – to do so. [Doc. 33]. The Court also entered its Pretrial Order and Case Management Plan the same day, setting the discovery deadline as July 7, 2023, and the dispositive motions deadline

as August 3, 2023. [Doc. 34]. On March 13, 2023, Defendant Walters moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. [Doc. 35]. On March 20, 2023, the Court issued another Roseboro Order, advising Plaintiff of his duties in responding to Defendant Walters' summary judgment motion and setting the response deadline as April 10, 2023. [Doc. 38].

On May 10, 2023, the Court received Plaintiff's purported, undated response to "Defendants' Motion to Dismiss."¹ [Doc. 39]. Now pending is Plaintiff's untitled motion in which he seeks "an extension of time to respond to the defendants' filings to Plaintiff's Complaint," which was postmarked May 9, 2023. [Doc. 41, 41-1]. Plaintiff also "move[s] the Court for reconsideration of any adverse[d] [*sic*] or unfavorable ruling by the Court as a result of Plaintiff's failure to timely respond to the defendant's filings." [Doc. 41 at 2]. As grounds, Plaintiff states that he underwent "a major surgery to remove the colostomy bag," that he was hospitalized thereafter "for a period time," that he "has been unstable while convalescing," and as pro se litigant, he is "without the means and resources to adequately respond to the defendant's filings." [Id. at 1].

¹ The envelope transmitting this filing was postmarked May 8, 2023. [Doc. 39-1].

The Court will deny Plaintiff's motion for extension of time without prejudice. While Plaintiff states that he underwent surgery and was in the hospital, Plaintiff fails to attest when his surgery occurred, how long he was in the hospital, and for how long he was "unstable" and presumably unable to respond to Defendants' motions. The Court cannot discern from the information before it whether Plaintiff is acting in good faith, particularly where the deadlines to respond to Defendant Friday's Motion to Dismiss and Defendant Walters' Motion for Summary Judgment are long expired. Plaintiff also fails to state the length of extension he seeks or the particular deadlines he wants extended. Plaintiff may refile his motion for an extension of time within fourteen (14) days of this Order. If Plaintiff refiles his motion, he must attest, under penalty of perjury, the date of his surgery and the durations of his hospital stay and relative incapacitation. If Plaintiff fails to timely renew his motion in accordance with the terms of this Order, the Court will decide the aforementioned Motions without consideration of any responses by Plaintiff.

Plaintiff's vague motion to reconsider "adverse rulings" by the Court will also be denied. The Court cannot and will not reconsider its prior rulings under these circumstances. Moreover, the Court sees no rulings to date that flowed from "Plaintiff's failure to timely respond to the defendant's filings."

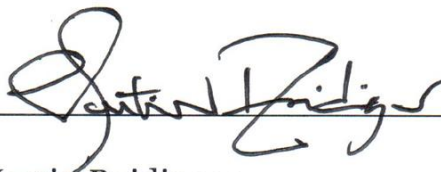
ORDER

IT IS, THEREFORE, ORDERED that Plaintiff's Motion [Doc. 41] is **DENIED without prejudice** in accordance with the terms of this Order.

IT IS FURTHER ORDERED that Plaintiff has fourteen (14) days from this Order to renew his motion for an extension of time to respond to Defendant Friday's Motion to Dismiss and Defendant Walters' Motion for Summary Judgment in accordance with the terms of this Order.

IT IS SO ORDERED.

Signed: May 22, 2023



Martin Reidinger
Chief United States District Judge

