

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

David A. Joseph, Sr.,

Plaintiff,

v.

Case No. 2:12-cv-803

Licking County, et al.,

Defendants.

OPINION AND ORDER

Plaintiff filed the instant prisoner civil rights action against Licking County, Ohio, and various government entities and defendants. On November 29, 2012, an order was entered dismissing all defendants with the exception of the Licking-Muskingum Community Corrections Center (LMCCC), against which plaintiff had asserted a claim under the Americans with Disabilities Act. See Doc. 5. On October 17, 2013, LMCCC filed a motion to dismiss pursuant to Fed. R. Civ. P. 4(m) on the ground that it was never properly served. Plaintiff filed no response to the motion, and on December 18, 2013, this court entered an order granting the motion and dismissing the complaint against LMCCC without prejudice. See Doc. 29. On January 7, 2014, plaintiff filed a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b), arguing that he should be relieved from judgment based on excusable neglect because he is incarcerated and has limited resources. See Doc. 33.

This matter is now before the court on the report and recommendation of the magistrate judge filed on March 25, 2014, in which the magistrate judge recommended that plaintiff's motion for relief from judgment be denied. The magistrate judge concluded that plaintiff had not shown excusable neglect for failing to serve

LMCCC within 120 days as required under Rule 4(m). Doc. 35, p. 2.

The report and recommendation specifically advised the parties that the failure to object to the report and recommendation within fourteen days "will result in a waiver of the right to de novo review by the District Judge and waiver of the right to appeal the judgment of the District Court." Doc. 35, p. 4.

Noting that the time period for filing objections to the report and recommendation has expired, and that no objections have been filed, the court adopts the report and recommendation (Doc. 35). The motion for relief from judgment (Doc. 33) is denied.

Date: April 23, 2014

s/James L. Graham
James L. Graham
United States District Judge