

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Joshua A. Rittenberry,

Plaintiff,

v.

Case No. 2:17-cv-804

Officer Parnell, et al.,

Judge Michael H. Watson

Defendants.

Magistrate Judge Vascura

ORDER

Plaintiff filed a complaint with jury demand but failed to pay the filing fee or move for leave to proceed *in forma pauperis*, prompting Magistrate Judge Vascura to issue an Order and Notice of Deficiency, ECF No. 2. Plaintiff responded to the Order by moving for leave to proceed *in forma pauperis*, but that motion was likewise deficient in that the affidavit in support of the motion was unsigned, and the motion did not include the requisite certified copy of Plaintiff's prison trust fund account statement. Magistrate Judge Vascura therefore issued a second Order and Notice of Deficiency, ECF No. 4.

Both Orders warned Plaintiff that a failure to timely comply with the same would result in dismissal of the case for want of prosecution. ECF Nos. 2, 4. Still, Plaintiff failed to comply.

Thus, on November 2, 2017, Magistrate Judge Vascura issued a Report and Recommendation ("R&R") recommending the Court dismiss Plaintiff's case for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). R&R,

ECF No. 6. She recommended, however, that the Court dismiss the case without prejudice and that the Court not assess the filing fee in this matter. *Id.* at 4. The R&R notified the parties of their right to object and specifically warned that a failure to timely object would result in waiver of the right to de novo review by the Undersigned as well as a waiver of the right to appeal the decision of the Undersigned adopting the R&R. *Id.*

In response to the R&R, Plaintiff filed a notice stating that the prison cashier refused to process his cashier statement and he was thus unable to submit the required certified copy of his prison trust fund account statement due to circumstances beyond his control. Notice, ECF No. 7. Plaintiff later submitted a certified copy of his prison trust fund account statement. ECF No. 8.

Plaintiff did not, however, submit a signed affidavit in support of his motion for leave to proceed *in forma pauperis*, nor did he timely object to the R&R.

Accordingly, the Court **ADOPTS** the R&R, **DISMISSES** this case **WITHOUT PREJUDICE**, and **DIRECTS** the Clerk not to assess a filing fee in this case. Finally, Plaintiff is **ORDERED** to list 2:17-cv-804 as a related case if he re-files this action.

IT IS SO ORDERED.



MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT