

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RAFAEL DAVILA,)	
)	Civil Action No. 13 – 67J
Plaintiff,)	
)	District Judge Kim R. Gibson
v.)	Chief Magistrate Judge Lisa Pupo Lenihan
)	
KARL KOZAK,)	
)	
Defendant.)	

MEMORANDUM ORDER

This matter is before the Court on Defendant Kozak’s Motion to Dismiss (ECF No. 14) and the magistrate judge’s Report and Recommendation dated February 4, 2014 (ECF No. 22) wherein she recommended that the Motion to Dismiss be denied in part and granted in part but that this action be dismissed for Plaintiff’s failure to prosecute.

The parties were served with the Report and Recommendation and informed that they had until February 21, 2014 to file written Objections. Even though the Department of Corrections confirmed that Plaintiff is no longer incarcerated, Plaintiff was served with the Report and Recommendation at SCI-Greene because that is his last known address of record. No objections were ever filed.

Therefore, after *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the following order is entered.

AND NOW, this 4th day of March, 2014,

IT IS HEREBY ORDERED that Defendant Kozak's Motion to Dismiss (ECF No. 14) is **DENIED in part** and **GRANTED in part**. The Motion is denied with respect to Plaintiff's deliberate indifference claim and granted with respect to Plaintiff's simple negligence claim.

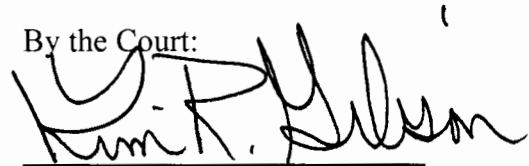
IT IS FURTHER ORDERED that this case is **DISMISSED** for Plaintiff's failure to prosecute because he has failed to keep the Court apprised of his current address and his whereabouts are unknown.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 22) is **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

Kim R. Gibson
United States District Judge

cc: Rafael Davila
179 Progress Drive
Waynesburg, PA 15370
(Via First Class Mail)

Counsel of Record
(Via ECF Electronic Mail)