

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

| | | |
|---------------------------------------------|---|--------------------------------|
| Frederick L. Cabbage stalk, |) | Civil Action No.: 0:13-212-MGL |
| |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | <u>ORDER</u> |
| |) | |
| |) | |
| Lt. McMillian, Classification; Major Darryl |) | |
| McGahey, Major of Security; Lt. Glover, |) | |
| Disciplinary Hearing Officer, in their |) | |
| individual and official capacity as county |) | |
| employees, |) | |
| |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

Plaintiff Frederick L. Cabbage stalk (“Plaintiff”), proceeding *pro se*, filed this action pursuant to 42 U.S.C. § 1983 against Defendants alleging violations of his constitutional rights. (ECF No. 1). At the time of the underlying events, Plaintiff was a pretrial detainee at the Sumter Lee Regional Detention Center in Sumter, South Carolina. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling and a Report and Recommendation.

On August 15, 2013, Defendants filed a motion for summary judgment. (ECF No. 63). In accordance with *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) (ECF No. 65), the Magistrate Judge issued an order that advised Plaintiff of the summary judgment procedures and the possible consequences for failing to respond adequately.¹ On August 26, 2013, the Magistrate Judge’s order (ECF No. 65) was returned as undeliverable mail. Thereafter, on September 25, 2013, the Magistrate Judge issued a second order directing Plaintiff to advise the court within fourteen (14)

¹Plaintiff was advised by order filed February 15, 2013 (ECF No. 11), of his responsibility to notify the court in writing if his address changed. Plaintiff was also informed that his case could be dismissed for failing to comply with the court's order. (ECF No. 11 at 2).

days of entry of the order whether or not he wished to continue with his case and to file a response to Defendants' motion for summary judgment. (ECF No. 76). Plaintiff was specifically warned that if he failed to respond, Defendants' motion could be granted and this matter could be dismissed for failure to prosecute. On October 3, 2013, the court's September 25, 2013 order was returned as undeliverable mail. Thereafter, on October 16, 2013, Magistrate Judge Gossett entered a Report and Recommendation recommending that this action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b) due to Plaintiff's failure to comply with this Court's orders. (ECF No. 80). The Magistrate Judge's Report was mailed to Plaintiff advising him of his right to file objections to the Report and Recommendation and the time frame in which he must do so. Objections were due on November 4, 2013. (ECF No. 80 at 3). The time for filing objections has passed and no objections have been filed.²

The Magistrate Judge makes only a recommendation to the court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261, 270, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The court may accept, reject, or modify, in whole or in part, the Report or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Upon review, the court notes that Plaintiff has failed to comply with this Court's order of February 15, 2013, by not keeping the Clerk advised of his current address. As such, it appears that Plaintiff no longer wishes to pursue this action. Accordingly, the court accepts the Magistrate

²The Magistrate Judge's Report and Recommendation was returned to the court as undeliverable mail on October 25, 2013.

Judge's Report and Recommendation. After careful review of the record, the applicable law, and the Report and Recommendation, the within action is hereby DISMISSED with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

/s/Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
November 6, 2013