

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Edrian Donyae Wright a/k/a Yae, Yae)
Yo,)
)
Plaintiff,)
)
vs.)
)
Dr. Kendtz and Barber Beede,)
)
Defendants.)
_____)

Civil Action No. 0:20-cv-2299-TMC

ORDER

Plaintiff Edrian Donyae Wright, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this action pursuant to 42 U.S.C. § 1983. (ECF Nos. 1; 2; 11; 17). In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(e) (D.S.C.), this matter was referred to a magistrate judge for all pretrial proceedings. On September 23, 2020, the magistrate judge entered an order authorizing the issuance and service of process against Defendants and directing the United States Marshals Service to effect service. (ECF No. 17). Both summonses were returned unexecuted, indicating that the South Carolina Department of Corrections (“SCDC”) could not find Defendants. (ECF No. 21). Consequently, the magistrate judge issued an order on November 6, 2020, directing Plaintiff to complete and return Form USM-285 to better identify both Defendants within fourteen days. (ECF No. 22). Twice Plaintiff filed new Forms USM-285 attempting to identify and locate Defendants, (ECF Nos. 30; 46), and the court reauthorized service and directed the Marshals Service to effect service pursuant to the forms Plaintiff filed, (ECF Nos.

32; 52).¹ Both times the summonses were returned unexecuted, again indicating that SCDC could not find Defendants. (ECF Nos. 39; 58; 59).

Now before the court is the magistrate judge's Report and Recommendation ("Report"), entered on March 9, 2021, recommending that the court dismiss this case for failure to effect service pursuant to Federal Rule of Civil Procedure 4(m). (ECF No. 65). The Report was mailed to Plaintiff at the address he provided to the court on March 10, 2021, (ECF No. 68), and has not been returned. Therefore, Plaintiff is presumed to have received the Report. Plaintiff was advised of his right to file objections to the Report. (ECF No. 65 at 4). However, Plaintiff has filed no objections and the time to do so has now run. This matter is now ripe for review.

The magistrate judge's recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. *Wimmer v. Cook*, 774 F.2d 68, 72 (4th Cir. 1985) (quoting *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). Nevertheless, "[t]he district court is only required to review *de novo* those portions of the report to which specific objections have been made, and need not conduct *de novo* review 'when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate judge's proposed findings and recommendations.'" *Farmer v. McBride*, 177 Fed. App'x 327, 330–31 (4th Cir. April 26, 2006) (quoting *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982)). The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, in the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Greenspan v. Brothers*

¹ Plaintiff appealed the court's December 1, 2020 order reauthorizing service to the Fourth Circuit Court of Appeals. (ECF No. 47). The Fourth Circuit dismissed Plaintiff's appeal and the mandate and order were filed on March 15, 2021. (ECF No. 68).

Prop. Corp., 103 F. Supp. 3d 734, 737 (D.S.C. 2015) (citing *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983)).

Thus, having thoroughly reviewed the Report and the record under the appropriate standards, the court, finding no clear error, **ADOPTS** the Report in its entirety (ECF No. 65), and incorporates it herein. Accordingly, the court finds that this action is subject to summary dismissal for failure to effect service pursuant to Rule 4(m). Therefore, this case is **DISMISSED** without prejudice. The clerk of court shall provide a filed copy of this order to Plaintiff at his last known address.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
March 31, 2021

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.