

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

Lynwood Bernard Thompson,)
)
 Plaintiff,)
)
 vs.)
)
 Officer Ware, Officer Jenkins, and)
 Officer B. Zachary,)
)
 Defendants.)
 _____)

C/A No. 2:09-2353-MBS

ORDER

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2010 JUN 10 P 12: 28

DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON, SC

Plaintiff Lynwood Bernard Thompson, proceeding pro se, filed a complaint pursuant to 42 U.S.C. § 1983 on September 4, 2009, alleging that Defendants Ware, Jenkins, and Zachary, all officers of the Fort Mill Police Department, violated his constitutional rights in various respects.

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 Robert S. Carr for pretrial handling. On January 28, 2010, Defendants Jenkins and Zachary filed a motion for summary judgment. By order filed January 29, 2010, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the Magistrate Judge advised Plaintiff of the summary judgment procedures and the possible consequences if he failed to respond adequately. Plaintiff filed a motion to voluntarily dismiss on February 8, 2010, to which Defendants Jenkins and Zachary filed a response on February 11, 2010. On May 11, 2010, the Magistrate Judge issued a Report and Recommendation in which he recommended that Plaintiff's motion to voluntarily dismiss be granted with prejudice as to Defendants Jenkins and Zachary. The Magistrate Judge further recommended that Defendant Ware be dismissed without prejudice for failure of Plaintiff to serve Defendant Ware with a copy of the summons and complaint. See Fed. R. Civ. P. 4(m). Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge 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).

The court has carefully reviewed the record and adopts the Report and Recommendation. Plaintiff’s motion to dismiss Defendants Jenkins and Zachary(Entry 39) is granted with prejudice. The court dismisses Defendant Ware without prejudice for failure of Plaintiff to timely serve this Defendant.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

June 8, 2010.

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.