

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

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2011 MAY 23 P 12:37

Rickey S. Henley,

Plaintiff,

vs.

Officer Knees,

Defendant.

C/A No.: 2:10-cv-2753-RMG

ORDER

Plaintiff brought this *pro se* action pursuant to 42 U.S.C. § 1983. This case was automatically referred to the United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) D.S.C. The Magistrate Judge recommended dismissing this action due to Plaintiff's failure to respond to Defendants' motion for summary judgment (Dkt. No. 32). Plaintiff has also failed to object to the R&R. As shown herein, this Court has reviewed the Record for any errors of law and agrees with the Magistrate Judge's report.

DISCUSSION

The magistrate judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

Here, the Magistrate Judge twice instructed Plaintiff of the importance of filing a response to a summary judgment motion. (Dkt. Nos. 26 & 30). Nevertheless, Plaintiff failed to file any response. Further, Plaintiff has not objected to the Magistrate Judge's recommendation that this action be dismissed for failure to prosecute. (Dkt. No. 32). It appears that the Plaintiff no longer wishes to pursue this action. As a result, this Court adopts the Magistrate Judge's Report and Recommendation as the order of this Court and incorporates it herein.

CONCLUSION

Accordingly, the Complaint is **DISMISSED** *with prejudice* for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982).

AND IT IS SO ORDERED.



Richard Mark Gerge
United States District Court Judge

May²³, 2011
Charleston, South Carolina