

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

Ronald Banks Mayhew,	)	
	)	
Plaintiff,	)	No. 2:14-cv-24-RMG
	)	
v.	)	
	)	<b>ORDER</b>
Judge Patrick Michael Duffy,	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that this case be dismissed without prejudice. (Dkt. No. 9). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

**Background**

Plaintiff filed this action *pro se* seeking damages and vacation of Judge Duffy’s dismissal of a prior action, *Mayhew v. ILA Local 1771*, No. 2:11-cv-3226-PMD, because Judge Duffy lacked the appearance of impartiality because his nephew worked for a defendant in that case. (Dkt. No. 1). Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was assigned to a Magistrate Judge for all pretrial proceedings. The Magistrate Judge then conducted an initial review of the pleading to ensure it was not frivolous. *See Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 363-64 (2d Cir. 2000). The Magistrate Judge then issued the present R&R recommending the case be dismissed as frivolous. (Dkt. No. 9). Plaintiff then filed a response to the R&R. (Dkt. No. 12).

**Legal Standard**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with

this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*


### **Discussion**

In his response, Plaintiff does not object to the R&R but rather accepts the recommendation of dismissal of this action. (Dkt. No. 12). After review of the record, the R&R, and Plaintiff’s response, the Court finds no clear error and therefore wholly adopts the R&R as the order of the Court. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005)

### **Conclusion**

As set forth above, the Court agrees with and wholly adopts the R&R as the order of the Court. (Dkt. No. 9).

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
Richard Mark Gergel  
United States District Court Judge

February 4, 2014  
Charleston, South Carolina