

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

Samuel A. Wilder,)	C/A NO. 2:15-00270-CMC-MGB
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
Tarcia L. James, in her individual)	
capacity as Nurse at McCormick)	
Correctional Inst., and Kellie L. Brewer,)	
in her individual capacity as Nurse at)	
McCormick Correctional Inst.,)	
)	
Defendants.)	
_____)	

Plaintiff, a state prisoner proceeding *pro se*, seeks relief pursuant to 42 U.S.C. § 1983. Defendants filed a Motion for Summary Judgment on July 23, 2015, and Plaintiff filed a Motion to Amend on October 14, 2015. Entry Nos. 21 and 44, respectively.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Mary Gordon Baker for pre-trial proceedings and a Report and Recommendation (“Report”). On January 25, 2016, the Magistrate Judge issued an Order granting Plaintiff’s Motion to Amend and a Report recommending that Defendants’ Motion for Summary Judgment be granted. ECF No. 46. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. On February 5, 2016, Plaintiff timely filed a Motion for Extension of time to file objections to the Report. Entry No. 51. This motion was granted, extending Plaintiff’s response time until March 7, 2016. Entry No. 52. On March 4, 2016, Plaintiff filed a Motion to Dismiss

pursuant to Rule 41(a)(1), Fed. R. Civ. P. Entry No. 54. Defendants filed a Response in Support of the Motion to Dismiss on March 7, 2016. Entry No. 55.

Plaintiff's Motion to Dismiss renders the Magistrate Judge's Report moot. However, Fed. R. Civ. P. 41(a)(1), as cited by Plaintiff, is not the proper rule for dismissal given the procedural posture of this case. Defendants have answered, and no stipulation of dismissal signed by all parties who have appeared was filed. Nevertheless, as Defendants consented to this dismissal in their response to Plaintiff's Motion to Dismiss, the court will dismiss Plaintiff's claim pursuant to Fed. R. Civ. P. 41(a)(2).

This action is **dismissed without prejudice**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
March 8, 2016