

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

Bernard McFadden, #199135,)
)
Plaintiff,)
)
v.)
)
Mrs. Butler, FNU, Food Supervisor of KCI;)
Mr. Thomas, FNU, Kitchen Manager of)
KCI; Mrs. Marshall Fullmer, Nutritionist)
for SCDC; Mrs. Marshall, Food Supervisor)
of KCI, in their individual or personal)
capacities,)
)
Defendants.)
_____)

C.A. No. 3:10-3104-JMC

ORDER

This matter is now before the court upon the Magistrate Judge’s Report and Recommendation [Doc. 63], filed on February 6, 2012, recommending Plaintiff’s Motion for Preliminary Injunction [Doc. 54] be denied and Defendants’ Motion for Summary Judgment [Doc. 48] be granted on the basis that Plaintiff failed to respond adequately to Defendants’ Motion for Summary Judgment. The Magistrate Judge advised Plaintiff that he would recommend that this action be dismissed with prejudice, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute if Plaintiff did not respond to Defendants’ Motion for Summary Judgment. [Doc. 57]. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter which the court incorporates herein without a recitation.

STANDARD OF REVIEW

The Magistrate Judge’s Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge

makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

DISCUSSION

Plaintiff Bernard McFadden is a *pro se* state prisoner pursuing this civil action against the Defendants alleging that his constitutional rights have been violated because he contends that the Defendants served inadequate portions of food and that the diet served is not nutritionally adequate.

Plaintiff was advised of his right to file objections to the Report and Recommendation [Doc. 63 at 13]. However, Petitioner filed no objections to the Report and Recommendation.

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "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) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140

(1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation [Doc. 63] and incorporates it herein. It is therefore **ORDERED** that Plaintiff's Motion for Preliminary Injunction [Doc. 54] is **DENIED** and Defendants' Motion for Summary Judgment [Doc. 48] is **GRANTED**.

IT IS SO ORDERED.

Handwritten signature of J. Michelle Childs in black ink.

United States District Judge

March 13, 2012
Greenville, South Carolina