

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

Kenneth Ray Mitchell,)	C/A NO. 3:11-609-CMC-PJG
)	
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
Liberty Tax Services; Marilyn Kirkland,)	
)	
Defendants.)	
_____)	

This matter is before the court on Plaintiff’s *pro se* complaint filed in this court relating to certain alleged actions of Defendants.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(e), DSC, this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation (“Report”). On September 21, 2011, the Magistrate Judge issued a Report recommending that this matter be dismissed without prejudice under Federal Rule of Civil Procedure 4(m). The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if she failed to do so. Plaintiff filed objections to the Report on September 30, 2011.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge 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 recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

Plaintiff contends that he provided addresses for Defendants and that “there is no excuse for non[-]service of the defendants.” Obj. at 1 (ECF No. 29). However, service was attempted at the addresses provided by Plaintiff. As to Defendant Kirkland, it appears that she no longer works at Liberty Tax Service. The address provided for Defendant Liberty Tax Service indicates that “John Hewtt [sic], Owner of Liberty Tax” was to be served. Return at 1 (ECF No. 18, filed Aug. 5, 2011). However, the return indicates that “John Hewitt is the CEO of Liberty Tax Service and the [Liberty Tax Service] @ 7120 Two Notch Rd is independently owned.” *Id.*

It appears that Plaintiff has been incarcerated since July 13, 2011. A letter informing the Clerk of a change of address was not received for filing until September 22, 2011. *See* ECF No. 26, filed Sept. 22, 2011). Therefore, Plaintiff may not have received the Order for Rule to Show Cause entered by Magistrate Judge Gossett on September 2, 2011.

Therefore, the Clerk shall serve a copy of the Order for Rule to Show Cause, together with another copy of the Report, on Plaintiff at his current address. Plaintiff shall have until **Friday, October 21, 2011**, to file a response to the Order and/or Report if he so chooses. Failure to respond will result in dismissal of this action without prejudice and without further notice from this court.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
October 4, 2011