

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

Joseph M. Croft,)	
)	C/A No. 4:10-1164-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
Simon Major, Director of SLRDC;)	
D. Scott Cook, Dietician of SLRDC; in)	
their individual and personal capacities,)	
)	
Defendants.)	
_____)	

At the time of the underlying complaint, Plaintiff Joseph M. Croft was detained at the Sumter-Lee Regional Detention Center in Sumter, South Carolina. Plaintiff, proceeding pro se, alleges that he was denied adequate portions of food and suffered extreme hunger pains as a result. Plaintiff seeks damages pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling. On June 2, 2010, the Magistrate Judge issued an order in which he informed Plaintiff of his obligation to keep the court apprised of his current address. Order 3, ECF No. 15. On June 11, 2010, the envelope containing Plaintiff’s copy of the order was returned to the Office of the Clerk of Court, marked “RETURN TO SENDER - NOT HERE.” See ECF No. 21. Additional pieces of mail also were returned to the Office of the Clerk of Court. See ECF Nos. 22, 27.

On August 25, 2010, Defendants Simon Major and Scott Cook filed a motion to dismiss on the grounds that Plaintiff had failed to update his address with the court and appeared to no longer desire to go forward with the action. Defendants thus moved the court to dismiss the action for failure to prosecute. Motion to Dismiss on Behalf of Defendants Simon Major and Scott Cook, ECF No. 30. By order filed August 26, 2010, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir.

1975), Plaintiff was advised of the dismissal procedures and the possible consequences if he failed to respond adequately. The envelope containing Plaintiff's copy of the Roseboro order was returned to the Office of the Clerk of Court on September 2, 2010, marked "RETURN TO SENDER." ECF No. 33.

On October 1, 2010, the Magistrate Judge issued a Report and Recommendation in which he determined that Plaintiff had abandoned the within case. The Magistrate Judge recommended that Defendants' motion be granted and the case dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b). The envelope containing Plaintiff's copy of the Report and Recommendation was returned to the Office of the Clerk of Court on October 12, 2010 marked "RETURN TO SENDER - NOT HERE."

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report of 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 may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

As noted, Plaintiff was instructed by order filed June 2, 2010 to keep the Clerk of Court advised in writing if his addressed changed for any reason. However, it does not appear that Plaintiff received the June 2, 2010 order. Because Plaintiff did not receive a copy of the order advising him of his obligation, the court is not inclined to dismiss the case with prejudice. Nevertheless, it appears that Plaintiff no longer wishes to pursue this action. The within action is dismissed without

prejudice pursuant to Rule 41(b).

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

October 26, 2010.

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.