

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Lavadre Butler, #337779,)
a/k/a Lavadre D. Butler,)
a/k/a Lavadre Dashun Butler,)
)
Plaintiff,)
)
v.)
)
Trevor Bessinger,)
Lisa Young,)
Gregory Washington,)
Mr. Suarez,)
Mr. Braddy,)
Mr. Shorter,)
Mr. Williams,)
J.C. Wilson,)
Travis Esterline,)
)
Defendants.)
_____)

Civil Action No. 4:16-3662-RMG-TER

ORDER AND OPINION

Before the Court is the Report and Recommendation (“R & R”) of the Magistrate Judge (Dkt. No. 148) recommending that Plaintiff’s claims against Defendant J.C. Wilson be dismissed. For the reasons set forth below, the Court adopts the R & R as the order of the Court and dismisses Plaintiff’s claims against Defendant Wilson.

I. Background

In November 2016, Plaintiff filed a *pro se* complaint claiming excessive force and deliberate indifference to his medical care in violation of his constitutional rights, pursuant to 42 U.S.C. § 1983. After service was authorized, Plaintiff was granted assistance from the U.S. Marshals Service with service of process and the summons as to Defendant Wilson was re-issued (Dkt. Nos. 28, 30), but Defendant Wilson’s summons was returned unexecuted because there were several individuals named “Mr. Wilson” at the Broad River Correctional Institution (Dkt.

No. 34). Plaintiff was granted additional time to serve Defendant Wilson. (Dkt. No. 50.) Plaintiff then filed an Amended Complaint and was ordered to provide information on service documents (Dkt. No. 108). Defendant Wilson was identified as J.C. Wilson and service was authorized (Dkt. No. 124), but the summons was again returned unexecuted because Defendant Wilson could not be located (Dkt. No. 133).

II. Legal Standard

A. Review of R & R

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, e.g., Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). 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)(C). Where a petitioner has not objected to the R & R, the Court reviews the R & R to “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note. In the absence of objections to the R & R, the Court need not give any explanation for adopting the Magistrate Judge’s analysis and recommendation. *See, e.g., Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983) (“In the absence of objection . . . we do not believe that it requires any explanation.”).

III. Discussion

The Court finds that the Magistrate Judge ably addressed the issues and correctly concluded that Plaintiff’s claims as to Wilson should be dismissed. Federal Rule of Civil Procedure 4(m) provides that the Court may *sua sponte* dismiss an action without prejudice where the Plaintiff fails to serve the Defendant with the summons and complaint within ninety days of filing the complaint. Here, Plaintiff has not served Defendant Wilson and has not

demonstrated good cause for the failure such that another extension of the deadline is warranted. Moreover, there is no basis to believe Defendant Wilson is on actual notice of the pending action such that service could be deemed waived. *See, e.g., O'Meara v. Waters*, 464 F. Supp. 2d 474, 476 (D. Md. 2006) (“When there is actual notice, failure to strictly comply with Rule 4 may not invalidate the service of process . . .”) (citing *Armco, Inc. v. Penrod-Stauffer Bldg. Sys., Inc.*, 733 F.2d 1987, 1989 (4th Cir. 1984). Accordingly, dismissal is proper under Rule 4.

IV. Conclusion

For the foregoing reasons, the Court **ADOPTS** the R & R of the Magistrate Judge (Dkt. No. 148) as the order of the Court and **DISMISSES WITHOUT PREJUDICE** Plaintiff's claims against Defendant Wilson.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

August 13, 2018
Charleston, South Carolina