

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Tressa R. Glover,) C/A No. 5:08-2399-JFA-BM
)
Appellant,) Bankruptcy No. 08-1058-JW
)
vs.) ORDER
)
William K. Stephenson, Jr.,)
)
Appellee.)
_____)

The *pro se* appellant, Tressa R. Glover, brings this action as an appeal to the Bankruptcy Court's decision denying her relief under Chapter 13 of the United States Bankruptcy Code. Under the court's initial order in this case, appellant was directed to pay the filing fee or submit appropriate documents to apply to proceed *in forma pauperis*.¹

The Magistrate Judge assigned to this action² has prepared a Report and Recommendation wherein he suggests that this court should dismiss the action due to appellant's failure to comply with this court's order and for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Report sets forth in detail the

¹ The Magistrate Judge notes that the initial order directing payment of the filing fee was not returned as undeliverable.

² The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. 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. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The appellant was advised of her right to file objections to the Report and Recommendation which was entered on the docket on August 18, 2008. However, the appellant did not file any objections³ to the Report within the time limits prescribed.

Applying the four-factor test of *Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978) to this action, the Magistrate Judge suggests that appellant's failure to comply with the initial order in this case indicates appellant's intent not to prosecute this case.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed without prejudice and without issuance and service of process for failure to prosecute under Rule 41(b).

IT IS SO ORDERED.



Joseph F. Anderson, Jr.
United States District Judge

September 9, 2008
Columbia, South Carolina

³ Under 28 U.S.C. § 636(b)(1), the district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's Report to which objections have been filed. The court reviews the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to timely file specific written objections to the Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).