

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

Perry Drake Gilmore,

Plaintiff,

vs.

Lieutenant Grealin Frasier; Lieutenant Jones;
Silva; Gilyard; Jenkins; Miller; Stirling;
Jeanette Atchley; Tommy Robinson;
Corporal Grant; Sergeant Hamilton; and
Virginia Robinson,

Defendants.

Civil Action No. 5:18-cv-202-CMC

ORDER

This matter is before the court on Plaintiff's Complaint filed January 25, 2018. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2), D.S.C., this matter was referred to United States Magistrate Judge Kaymani D. West for pre-trial proceedings and a Report and Recommendation ("Report") on dispositive issues.

On April 23, 2019, the Magistrate Judge issued a Report recommending certain Defendants be dismissed without prejudice pursuant to Fed. R. Civ. P. 41. ECF No. 157. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. The Report was sent to the address identified by Plaintiff in his change of address notice dated January 30, 2019. ECF No. 140. On May 3, 2019, the mail was returned as undeliverable. ECF No. 161. The Magistrate Judge then entered another Report on May 6, 2019, recommending the action be dismissed in accordance with Rule 41(b), but noting if "Plaintiff notifies the court within the time set for filing objections to this Report and Recommendation that he wishes to continue with this case and provides a current address, the

Clerk is directed to vacate this Report and Recommendation and return the file to the undersigned for further handling.” ECF No. 162. Plaintiff did not file objections or otherwise respond to the Report within the time allowed for objections. However, on May 30, 2019, Plaintiff filed a Motion for Extension of time to file objections, and an Objection to the second Report recommending dismissal (ECF No. 162). ECF Nos. 167, 168.

Plaintiff argues he was on vacation when the second Report, issued and mailed May 6, was received in the mail. ECF No. 167. He also argues he gave the correct address and has received mail from the court there previously, and confirmed the address on file with the Clerk. ECF No. 168. Therefore, it appears the first Report (ECF No. 157) was returned to the court even though the address was correct.

Based on Plaintiff’s filings, the court hereby vacates the Order dismissing the case and Judgment entered May 29, 2019. ECF Nos. 164, 165. In addition, the court grants Plaintiff’s motion for extension and he shall have until June 14, 2019 to file objections to the Report recommending dismissal of certain Defendants (ECF No. 157). The Clerk is directed to re-send a copy of that Report to Plaintiff with this Order.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
May 31, 2019