

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. The court therefore adopted the Report issued May 6 and dismissed the case for failure to prosecute. ECF No. 164. 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. Based on those filings, the court vacated the Order dismissing the case and granted Plaintiff’s motion for extension, allowing until June 14, 2019 for Plaintiff to file objections to the Report recommending dismissal of the unserved Defendants Gilyard, Jenkins, Atchley, Robinson, and Hamilton (ECF No. 157)¹. The court will now proceed to rule on the Report issued April 23, 2019.

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). 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) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but

¹ The Clerk was directed to re-send a copy of that Report to Plaintiff.

instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

Despite receiving his requested extension, Plaintiff has failed to file objections to the Report regarding the unserved Defendants, and his copy of the Order and Report have not been returned to the court. In an abundance of caution, the court has delayed ruling on this Report nearly a month past the deadline for objections, yet none have been filed. Further, Plaintiff has failed to provide the necessary information and paperwork for attempting service on Defendants Gilyard, Jenkins, Atchley, Robinson, and Hamilton despite being given three extensions prior to the April 23 Report and the extension to June 14.

After a review of the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court finds no clear error and agrees with the Report’s recommendation the unserved Defendants should be dismissed. Accordingly, the court adopts the Report by reference in this Order. Defendants Gilyard, Jenkins, Atchley, Robinson, and Hamilton are hereby dismissed without prejudice. This case is re-referred to the Magistrate Judge for further pre-trial proceedings.

IT IS SO ORDERED.

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

Columbia, South Carolina
July 10, 2019