

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Quintin M. Littlejohn,)
)
)
Plaintiff,)
v.)
)
)
Kathy J. Littlejohn Byers, James H. Byers, Sr.,)
James H. Byers, Jr., James Byers,)
Peggy T. Littlejohn Whittenburg,)
)
)
Defendants.)
_____)

C. A. No. 7:10-cv-02075-JMC

ORDER AND OPINION

This matter is before the court on the Magistrate Judge’s Report and Recommendation [Doc. # 11], filed on August 10, 2010, recommending Plaintiff Quintin M. Littlejohn’s (“Plaintiff”) Complaint [Doc. # 1] be dismissed without prejudice and without issuance of service of process on the basis that it is frivolous and that Plaintiff’s Motion for Summary Judgment [Doc. # 6] be terminated as moot. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge’s recommendation without a recitation.

STANDARD OF REVIEW

The Magistrate Judge’s Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423

U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

DISCUSSION

Plaintiff is a *pro se* litigant proceeding under the *in forma pauperis* statute, 28 U.S.C. § 1915 (2010). The statute authorizes the district court to dismiss a case if it is satisfied that the action is frivolous or fails to state a claim on which relief may be granted. 28 U.S.C. §1915(e)(2)(B)(I) and (ii). As a *pro se* litigant, the plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by lawyers. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007)(per curiam). However, even under this less stringent standard, a *pro se* pleading remains subject to summary dismissal. The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *Weller v. Department of Social Services*, 901 F.2d 387, 391 (4th Cir. 1990).

After receiving the Magistrate Judge's Report and Recommendation on the pending motions, Plaintiff timely filed objections. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. *See United States v. Schronce*, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Magistrate Judge's Report and Recommendation, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that Plaintiff's timely filed objection [Doc. # 13], titled Petition for Writ of Rebuttal, is non-specific, unrelated to the dispositive portions of the Magistrate Judge's Report and Recommendation, and merely restates his claims.

Therefore, after a thorough review of the Magistrate Judge's Report and Recommendation and the record in this case, the court adopts the Report and Recommendation [Doc. # 11] and incorporates it herein. It is therefore **ORDERED** that Plaintiff's Complaint [Doc. # 1] is **DISMISSED** without prejudice. Furthermore, Plaintiff's Motion for Summary Judgment [Doc. # 6] is terminated as **MOOT**.

IT IS SO ORDERED.

s/ J. Michelle Childs
United States District Judge

December 28, 2010
Greenville, South Carolina