

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

Julius Gillespie and Mary W. Breedlove,)
)
Plaintiffs,)
)
vs.)
)
Actus Lend Lease, et. al.,)
)
Defendants.)
)
_____)

Civil Action No. 9:10-cv-120-RMG-BHH

ORDER

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2011 APR 11 P 2 27

Plaintiffs are proceeding in this matter *pro se* as their counsel was released from representation by prior order from this Court. This case was automatically referred to the United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) D.S.C. Defendants have filed three separate motions to dismiss based on the Plaintiffs' failure to prosecute this case. The Magistrate Judge recommended dismissing Plaintiff Gillespie's claims for failure to prosecute due to his failing to respond to outstanding motions and recommended giving Plaintiff Breedlove until April 4, 2011 to respond to the outstanding motions. (Dkt. No. 81). As shown herein, this Court has reviewed the Record for any errors in law and agrees with the Magistrate Judge's report.

Discussion

The magistrate judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific

objection is made, and this Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate with instructions.” *Id.*

Here, Plaintiff Gillespie has not provided the Court with a current address as required by the Local Rules and has not responded to the pending motions. Therefore, he has apparently abandoned this action. On the other hand, Plaintiff Breedlove phoned the clerk’s office and asked for more time to respond to the motions on the eve of the deadline for responding to the motions. This Court will construe Plaintiff Breedlove’s phone call as sufficient for asking for an extension and grant the extension but for a limited time.

Conclusion

Accordingly, Plaintiff Gillespie’s claims are dismissed for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure with prejudice. Plaintiff Breedlove has until April 24, 2011 to respond to the pending motions or her claims will also be dismissed with prejudice for failure to prosecute pursuant to Rule 41.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

April 17, 2011
Charleston, South Carolina