

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

Cedrick Demond Smith, #332034,	)	
	)	Civil Action No. 9:14-2593-TMC
Plaintiff,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
Elizabeth Holcomb, Medical,	)	
	)	
Defendant.	)	
	)	

Plaintiff Cedrick Demond Smith, a state prisoner proceeding pro se, filed this action pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02, D.S.C., this matter was referred to a magistrate judge for pretrial handling. Before the court is the magistrate judge’s Report and Recommendation (“Report”), recommending that the action be dismissed without prejudice for failure to prosecute. (ECF No. 21). Plaintiff was advised of his right to file objections to the Report. (ECF No. 21 at 3). Plaintiff filed objections on January 26, 2015. (ECF No. 23).

The Report has no presumptive weight and the responsibility to make a final determination in this matter remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court need not conduct a de novo review when a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In that case, the court reviews the Report only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

In the report, the Magistrate Judge stated that if Plaintiff notified the court within the time set forth for filing objections that he wished to continue with this case and provided a

response to the motion for summary judgment, the Clerk was to vacate this Report and return this file to the Magistrate Judge for further handling. As set forth above, Plaintiff filed objections to the Report and indicated he wished to continue with this action. (ECF No. 23). However, he did not file a response to the summary judgment motion as directed. Pursuant to Federal Rule of Civil Procedure 41(b), a district court may dismiss a complaint based upon the litigant's failure to comply with the court's orders. *See Simpson v. Welch*, 900 F.2d 33, 35-36 (4th Cir. 1990). See also *Ballard v. Carlson*, 882 F.2d 93, 95-96 (4th Cir. 1989) (holding that district court's dismissal following an explicit and reasonable warning was not an abuse of discretion).

Accordingly, the court adopts the Magistrate Judge's Report (ECF No. 21) and incorporates it herein. It is therefore **ORDERED** that this action is **DISMISSED without prejudice** for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b) and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982). *See also Ballard*, 882 F.2d 93.

**IT IS SO ORDERED.**

s/Timothy M. Cain  
Timothy M. Cain  
United States District Judge

January 27, 2015  
Anderson, South Carolina

#### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

