

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DUANE MCATEE,

Plaintiff,

v.

// CIVIL ACTION NO. 1:13cv162  
(Judge Keeley)

JEFF JAMES,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 7] AND  
DISMISSING CASE WITHOUT PREJUDICE FOR FAILURE TO PROSECUTE**

On June 27, 2013, the pro se plaintiff, Duane McAtee ("McAtee"), filed a complaint against the defendant, Jeff James. (Dkt. No. 1). On June 28, 2013, the Court provided McAtee with notice of general guidelines for appearing pro se in federal court (dkt. no. 2) and notice of deficient pleading (dkt. no. 3), both of which McAtee accepted on July 3, 2013 (dkt. no. 5). The notice of deficient pleading informed McAtee that, among other things, he was required either to file an application in forma pauperis or to pay the \$400 filing fee. The notice further advised him that failure to comply would result in the dismissal of the case, pursuant to Fed. R. Civ. P. 41(b).

The Court referred this matter to the Honorable John S. Kaull, United States Magistrate Judge, who entered a report and recommendation ("R&R") on December 11, 2013, recommending that the case be dismissed for failure to prosecute. Because McAtee has not complied with the notice of deficient pleading, nor filed any

objections to the R&R, the Court **ADOPTS** the R&R and **DISMISSES** this case **WITHOUT PREJUDICE** for failure to prosecute.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record and the pro se plaintiff, return receipt requested, and to enter a separate judgment order.

DATED: May 1, 2014.

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE