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

CLINTON RATLIFF,

        Plaintiff,

v.   Civil Action No. 5:12CV113
                                                           (STAMP)
NICKY SEIFERT, EVELYN SEIFERT,
JAMES RUBENSTEIN and
NATHAN WRIGHT, Correctional Officer,

        Defendants.

MEMORANDUM OPINION AND ORDER
DECLINING TO ADOPT REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE AND
DENYING WITHOUT PREJUDICE MOTION TO DISMISS

The plaintiff filed this civil action under 42 U.S.C. § 1983

on July 20, 2012. The plaintiff's complaint alleges that the

defendants have violated his civil rights through the complicity to

the actions of Correctional Officer Nathan Wright at Northern

Regional Correctional Facility. The plaintiff alleges that the

defendants failed to correct or otherwise respond to the excessive

force employed by Correctional Officer Wright despite their

knowledge and recognition of the impropriety of his actions toward

the plaintiff. Pursuant to Local Rule of Prisoner Litigation 2,

this case was referred to United States Magistrate Judge James E.

Seibert for initial review and report and recommendation.

On October 16, 2012, the defendants filed a motion to dismiss

the plaintiff's complaint, which was fully briefed by the parties.

The magistrate judge then directed the defendants to supplement

their motion to dismiss by February 28, 2013. When the defendants

failed to comply with this order to supplement, the magistrate

judge ordered the defendants to appear at a hearing to show cause

why they should not be held in contempt of court for failing to

comply with an order of court. At that hearing, which was not

attended by the plaintiff, the defendants indicated that this civil

action had been resolved and settled, but that the defendants were

waiting for a response from a governmental health insurance program

in order to disperse the settlement funds to the plaintiff.

The magistrate judge then issued a report and recommendation,

recommending that this Court dismiss this civil action as settled,

subject to the right of the defendants to reopen. The magistrate

judge informed the parties of their right to object within fourteen

days of receiving the report and recommendation. The plaintiff did

not object, but following the report and recommendation, the

parties filed correspondence between the plaintiff and counsel for

the defendants indicating that the settlement funds have not yet

been dispersed, and that the settlement has thus not yet been

finalized.

While this Court recognizes that the defendants have indicated

that a settlement has been reached, they have failed to provide

this Court with any evidence supporting that assertion, and filings

with this Court following the report and recommendation clearly

indicate that any settlement that may have been reached between the

parties has not yet been finalized. Further, the defendants have failed to provide this Court with any indication that the plaintiff consents to the dismissal of his civil action. The plaintiff was not present at the show cause hearing before the magistrate judge, and he has not filed any document indicating that he has agreed to settle his claims, or that he has received settlement funds. It seems clear, in fact, that he has received nothing at this time.

Accordingly, it is not appropriate to dismiss this civil action at this time. This Court must decline to affirm and adopt the recommendation of the magistrate judge. However, as it seems that the parties are at least working toward finalizing a settlement in this case, the defendants' motion to dismiss is DENIED WITHOUT PREJUDICE subject to refiling should a settlement fail to succeed. The parties are DIRECTED to keep this Court informed of any changes in the status of the settlement process moving forward.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se plaintiff by certified mail and to counsel of record herein.

DATED: August 12, 2013

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE