

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

BRIANNA ANN SUNSHINE,

Plaintiff,

v.

CIVIL ACTION NO. 2:21-cv-00667

BETSY C. JIVIDEN, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

On December 23, 2021, the Plaintiff's pro-se *Complaint* (Document 1) was filed in this matter. Motions currently pending include *Defendant David Proctor's Motion to Dismiss Plaintiff's Complaint* (Document 51), *Defendant David Proctor, D.O.'s Motion to Designate His Motion to Dismiss as Unopposed and to Dismiss the Complaint for Failure to Prosecute* (Document 65), and *Plaintiff's Motion to Dismiss* (Document 69) wherein the Plaintiff moves to dismiss this action as it relates to Defendant David Proctor, D.O.

By *Administrative Order* (Document 2) entered on December 27, 2021, this action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On June 6, 2022, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 72) wherein it is recommended that this Court grant *Plaintiff's Motion to Dismiss* (Document 69), deny as moot *Defendant David Proctor's Motion to Dismiss Plaintiff's Complaint* (Document 51) and *Defendant David Proctor, D.O.'s Motion to Designate His Motion to Dismiss as Unopposed and to Dismiss the Complaint for Failure to Prosecute* (Document 65), and refer this matter back to the Magistrate Judge for further proceedings concerning the Plaintiff's claims against Defendants Jividen, Defibaugh, Searls, and Felton.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by June 23, 2022, and none were filed by either party. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*. The Court **ORDERS** that *Plaintiff's Motion to Dismiss* (Document 69) be **GRANTED** and that Defendant David Proctor, D.O., be **DISMISSED** from this action pursuant to Rule 41(a) (1)(A)(i). The Court further **ORDERS** that *Defendant David Proctor's Motion to Dismiss Plaintiff's Complaint* (Document 51) and *Defendant David Proctor, D.O.'s Motion to Designate His Motion to Dismiss as Unopposed and to Dismiss the Complaint for Failure to Prosecute* (Document 65) be **DENIED AS MOOT**. Lastly, the Court **ORDERS** that this matter be **REFERRED** to the Magistrate Judge for further proceedings concerning the Plaintiff's claims against Defendants Jividen, Defibaugh, Searls, and Felton.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: June 28, 2022



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA