

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-41192



WINGROVE ROBINSON,

Plaintiff - Appellant

v.

A True Copy
Certified order issued Jan 24, 2019

Steph W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

RAINTREE TOWER APARTMENTS; RITA SMITH, Manager of Raintree
Tower Apartments; CAROLYN WEST, Deceased; KATY BARRILLEAU,
Senior V.P., Raintree Apartments,

Defendants - Appellees

Appeal from the United States District Court
for the Eastern District of Texas

Before OWEN, HO, and DUNCAN, Circuit Judges.

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment. In this civil rights action, the district court entered final judgment dismissing the complaint on November 1, 2018. Therefore, the final day for filing a timely notice of appeal was Monday, December 3, 2018, because the thirtieth day was a Saturday. See FED. R. APP. P. 26(a)(1)(C). The plaintiff's notice of appeal was filed on December 26, 2018. When set by

No. 18-41192

statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *Robbins v. Maggio*, 750 F.2d 405, 408 (5th Cir. 1985).

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

WINGROVE ROBINSON,

Plaintiff,

v.

RAINTREE TOWER APTS., et al.,

Defendants.

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CIVIL ACTION NO. 1:16-CV-500

**REPORT AND RECOMMENDATION
DISMISSING CASE FOR FAILURE TO PROSECUTE**

This case is assigned to the Honorable Marcia Crone, United States District Judge, and is referred to United States Magistrate Judge Zack Hawthorn for pretrial management pursuant to General Order 05-07. On April 12, 2017, Judge Hawthorn issued an order, per Plaintiff Wingrove Robinson's request (Doc. No. 14), extending the deadline for the parties to conduct a Rule 26(f) conference to April 26, 2017, as well as postponing the parties' Rule 16 case management conference to May 12, 2017. Doc. No. 16. Robinson did not comply with the court order to conduct the Rule 26(f) conference, nor did he appear at the May 12, 2017 case management conference. Accordingly, this case should be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

Federal Rule of Civil Procedure 41(b) authorizes the district court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). "This authority flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases." *Boudwin v. Graystone Ins. Co.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629

(1962)). The court's authority to issue this type of sanction "is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts." *Id.* at 629-30 (1962); *see also Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997), *cert. denied*, 522 U.S. 875 (1997). The court's authority to dismiss for failure to prosecute is committed to the sound discretion of the court. *Green v. Forney Eng'g Co.*, 589 F.2d 243, 247-48 (5th Cir. 1979).

Robinson was properly served with the court's order to conduct a Rule 26(f) attorney conference and appear before the undersigned for a case management conference, but has failed to comply. In the interest of judicial economy, his case should be **DIMISSED** without prejudice for failure to prosecute and failure to comply with a court order.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(c) (Supp. IV 2011), each party to this action has the right to file objections to this report and recommendation. Objections to this report must (1) be in writing, (2) specifically identify those findings or recommendations to which the party objects, (3) be served and filed within fourteen days after being served with a copy of this report; and (4) be no more than eight pages in length. *See* 28 U.S.C. § 636(b)(1)(c); FED. R. CIV. P. 72(b)(2); Local Rule CV-72(c). A party who objects to this report is entitled to a de novo determination by the United States District Judge of those proposed findings and recommendations to which a specific objection is timely made. *See* 28 U.S.C. § 636(b)(1)(c); FED. R. CIV. P. 72(b)(3).

A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in this report, within fourteen days of being served with a copy of this report, bars that party from: (1) entitlement to de novo review by the United States District Judge of the findings of fact and conclusions of law, *see Rodriguez v. Bowen*, 857 F.2d 275, 276-

77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error, of any such findings of fact and conclusions of law accepted by the United States District Judge. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

SIGNED this 15th day of May, 2017.



Zack Hawthorn
United States Magistrate Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

WINGROVE ROBINSON,

Plaintiff,

v.

RAINTREE TOWER APARTMENTS,
et al.,

Defendants.

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CIVIL ACTION NO. 1:16-cv-500

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The court has received and considered the report and recommendation (Doc. No. 22) of the magistrate judge, which recommends that the court dismiss Plaintiff Wingrove Robinson's complaint for failure to prosecute and failure to comply with a court order. Specifically, Robinson failed to conduct the mandatory Rule 26(f) attorney conference with opposing counsel, and did not appear before the magistrate judge for a case management conference, as ordered.

The court has reviewed Robinson's "Motion for Reconsideration for Non-Dispositive Matters" (Doc. No. 24). Because Robinson is proceeding *pro se*, the court liberally construes the motion as an objection to the magistrate judge's report and recommendation. The court finds that Robinson's objections do not address either basis for dismissal—failure to prosecute or failure to comply with a court order—and accordingly concludes that his objections are without merit. The court's own *de novo* review of the report and recommendation finds that the magistrate judge's conclusion is correct.

It is, therefore, **ORDERED** that the magistrate judge's report and recommendation (Doc. No. 22) is **ADOPTED**. Robinson's complaint is **DISMISSED** without prejudice, in accordance

with Rule 41(b) of the Federal Rules of Civil Procedure. The Clerk of Court is directed to close this case.

SIGNED at Beaumont, Texas, this 18th day of June, 2017.

A handwritten signature in cursive script, reading "Marcia A. Crone".

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

WINGROVE ROBINSON,

Plaintiff,

v.

RAINTREE TOWER APARTMENTS,
et al.,

Defendants.

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CIVIL ACTION NO. 1:16-cv-500

ORDER DENYING MOTIONS TO RECONSIDER

On June 18, 2017, this court entered an Order adopting United States magistrate judge Zack Hawthorn's report and recommendation (Doc. No. 22) dismissing this case pursuant to FED. R. CIV. P. 41(b). (Doc. No. 25). However, the court did not enter a Final Judgment. On July 5, 2017, the Plaintiff, Wingrove Robinson, proceeding *pro se* and *in forma pauperis*, filed a "Cause Petition for Writ of Mandamus." (Doc. No. 26.) On July 27, 2017, Robinson also filed a "Motion to Reconsider Denial for Partial Summary Judgment." (Doc. No. 27).

Both motions are not entirely clear as to the relief Robinson is requesting, but both seem to rehash Robinson's underlying complaint concerning the Defendants' theft of a \$27,000 check Robinson received from FEMA and his dissatisfaction with the state court's handling of the identical suit. Because Robinson is proceeding *pro se*, the court liberally construes both motions as motions to reconsider this court's order adopting Judge Hawthorn's recommendation of dismissal pursuant to Rule 41(b).

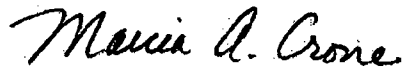
Judge Hawthorn recommended dismissal because Robinson failed to conduct the mandatory Rule 26(f) conference with opposing counsel, and did not appear before the magistrate

judge for a case management conference, as ordered. (Doc. No. 22). As stated previously, this court adopted that recommendation after considering his “Motion for Reconsideration for Non-Dispositive Matters” (Doc. No. 24) that was construed as an objection to the report and recommendation. (Doc. No. 25).

In pertinent part, Robinson claims in the pending “Motion to Reconsider Denial for Partial Summary Judgment” that FED. R. CIV. P. 26(f) does not apply to him and Judge Hawthorn’s order to conduct his Rule 26(f) conference with opposing counsel violates his rights under the Fourth and Fourteenth Amendments to the United States Constitution. (Doc. No. 27, pp. 2, 4). Both arguments are without merit. Robinson claims “[m]eet and confer 26(f) does not apply to me!” (Doc. No. 27, p.2). Robinson is partially correct. The “meet and confer” requirements in the Local Rules regarding certificates of conference do not apply to *pro se* litigants. See LOC. R. CV-7(i). However, Judge Hawthorn recommended dismissal not for the failure to include a proper *certificate* of conference, but for failure to conduct a Rule 26(f) conference. Judge Hawthorn clearly admonished Robinson that this court deems “failures to participate fully in the Rule 26(f) conference may result in the imposition of sanctions.” (Doc. No. 11, p.3). Even without legal counsel, *pro se* litigants are still expected to comply with relevant orders and the Federal Rules of Civil Procedure. See *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981) (“The right of self-representation does not exempt a party from compliance with relevant rules of procedural and substantive law.”) Moreover, the court cannot find any authority that a requirement for parties to engage in a Rule 26(f) conference violates a party’s constitutional rights.

For the above stated reasons, Robinson's "Cause Petition for Writ of Mandamus" (Doc. 26) and "Motion to Reconsider Denial for Partial Summary Judgment" (Doc. No. 27) are DENIED. A Final Judgment dismissing this case will be entered separately.

SIGNED at Beaumont, Texas, this 31st day of October, 2017.

A handwritten signature in black ink, reading "Marcia A. Crone", is positioned above a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

CAUSE NO. B-0197319

CIV ACTION #1316 CV 500

WINGROVE ROBINSON,
Plaintiff,

IN THE DISTRICT COURT OF

VS.

JEFFERSON COUNTY, TEXAS

RAINTREE TOWER APARTMENTS,
Defendant.

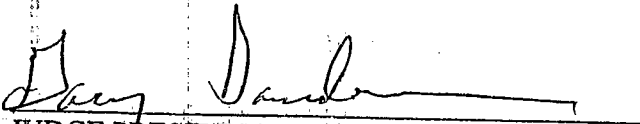
60TH JUDICIAL DISTRICT

FINAL JUDGMENT IN FAVOR OF DEFENDANT

On this day considered Raintree Tower Apartments' Motion for Summary Judgment ("Motion") on all Wingrove Robinson's ("Plaintiff") claims and causes of action. After considering the law, the pleadings, the summary judgment evidence, and the arguments of counsel, if any, the Court is of the opinion that the Motion should be granted, as a matter of law. It is, therefore,

ORDERED that Raintree Tower Apartments' Motion for Summary Judgment upon all Wingrove Robinson's claims and causes of action is granted and Plaintiff takes nothing by way of his claims and causes of action, which are hereby dismissed, with prejudice, from this cause.

SIGNED on this 4th day of December, 2015.


JUDGE PRESIDING

THIS IS INDIRECT CONTEMPT OF COURT.

SEE CONTEMPT 1 A M. DERSHOWITZ

THIS A VIOLATION OF MY 5TH AMENDMENT RIGHTS. (DOUBLE JEOPARDY).

THIS IS ALSO FRAUD ON THE COURT.

THIS IS ALSO INEQUITABLE CONDUCT.

THIS IS ALSO PREJUDICIAL.

SEE RULES OF CRIMINAL PROCEDURE
#14 - THIS VERDICT WAS REPUGNANT.

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Plaintiff - Appellant

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Senior V.P., Raintree Apartments,

Defendants - Appellees

Appeal from the United States District Court for the
Eastern District of Texas

Before OWEN, HO, and DUNCAN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that appellant's motion for leave to file out of time a motion for reconsideration is DENIED.

This panel previously dismissed the appeal for lack of jurisdiction. The panel has considered appellant's motion for reconsideration. IT IS FURTHER ORDERED that the motion for reconsideration is DENIED.