

Case 1:16-cv-00096-TH-ZJH Document 31 Filed 01/02/19 Page 1 of 1 PageID #: 175110305816

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

JEREMY P. SPENCER
VS.
LIEUTENANT MINTER, ET AL.

§

CIVIL ACTION NO. 1:16cv96

§

ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

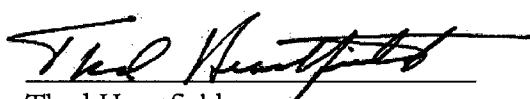
Jeremy P. Spencer, proceeding *pro se*, filed the above-styled civil rights lawsuit. The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge for consideration pursuant to applicable orders of this court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that this case be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. No objections to the Report and Recommendation were filed by the parties.

ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are adopted and the report of the Magistrate Judge is **ADOPTED**. A final judgment shall be entered dismissing this lawsuit.

SIGNED this the 2 day of January, 2019.


Thad Heartfield
United States District Judge

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

JEREMY P. SPENCER §
VS. § CIVIL ACTION NO. 1:16cv96
LIEUTENANT MINTER, ET AL. §

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Jeremy P. Spencer, proceeding *pro se*, filed this civil rights lawsuit. This matter was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636 and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Procedural Background

The court previously entered an order directing plaintiff to provide the court with the full names of the defendants and an address at which each defendant could be served with process. The time for complying with the order has expired. However, plaintiff has not provided the court with any full names or addresses.

Discussion

Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss an action based upon a plaintiff's failure to prosecute or failure to comply with any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). "This authority [under Rule 41(b)] flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases." *Boudwin v. Graystone Insurance Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash, R.R. Co.*, 370 U.S. 626, 629 (1962)).

By failing to comply with the court order described above, plaintiff has failed to diligently prosecute this civil rights lawsuit. As a result, this case should be dismissed for want of prosecution.

Recommendation

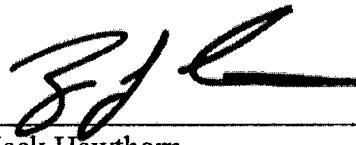
This civil rights lawsuit should be dismissed without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b).

Objections

Objections must be (1) specific, (2) in writing, and (3) served and filed within 14 days after being served with a copy of this report. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 6(a), 6(b) and 72(b).

A party's failure to timely file objections to this Report and Recommendation will bar that party from (1) entitlement to *de novo* review by a district judge of proposed findings and recommendations, *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error, of unobjected-to factual findings and legal conclusions accepted by the district court, *Douglass v. United Serv. Auto. Ass'n.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

SIGNED this 2nd day of October, 2018.



Zack Hawthorn
United States Magistrate Judge

Case 1:16-cv-00096-TH-ZJH Document 40 Filed 01/14/20 Page 1 of 1 PageID #: 10975783

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

JEREMY SPENCER §
VS. § CIVIL ACTION NO. 1:16
LIEUTENANT MINTER, ET AL. §

MEMORANDUM OPINION AND ORDER

A Final Judgment was previously entered dismissing this case. Plaintiff then filed a notice of appeal and two motions seeking to proceed *in forma pauperis* on appeal (doc. nos. 38 and

Under 28 U.S.C. § 1915(g), prisoners are prohibited from proceeding *in forma pauperis* either at the district court level or on appeal, if at least three of their prior lawsuits or appeals have been dismissed as frivolous or malicious, or for failing to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Prior to the date on which plaintiff filed his notice of appeal, courts had dismissed at least three lawsuits filed by plaintiff as frivolous or for failure to state a claim.¹ Plaintiff has demonstrated he was in “imminent danger of serious physical injury” on the date he filed his notice of appeal. Accordingly, Section 1915(g) bars plaintiff from proceeding with his appeal on *in forma pauperis* basis.

ORDER

For the reasons set forth above, plaintiff’s motions to proceed *in forma pauperis* on appeal are **DENIED**.

SIGNED this the 14 day of January, 2020.


Thad Heartfield
United States District Judge

¹ *Spencer v. Ardoon*, No. 1:16cv94 (E.D. Tex. Apr. 24, 2017) (dismissed as frivolous and for failure to state a claim).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-40898



JEREMY P. SPENCER,

Plaintiff - Appellant

v.

A True Copy
Certified order issued Feb 18, 2020

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

MINTER, Lieutenant; RICHARD, Correctional Officer; TINKER,
Correctional Officer; LEBLANC, Correctional Officer,

Defendants - Appellees

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

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of February 18, 2020,
for want of prosecution. The appellant failed to timely pay the fee.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

Christina A. Gardner

By: _____
Christina A. Gardner, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT