APPENDICES

APPENDIX-A

20-5259

Jasper Lee Vick
#139471
Hardeman County Correctional Facility
P.O. Box 549
Whiteville, TN 38075

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
Deborah S. Hunt
Clerk
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988
Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 25, 2020

Mr. Jasper Lee Vick
Hardeman County Correctional Facility
P.O. Box 549
Whiteville, TN 38075

Re: Case No. 20-5259, *Jasper Vick v. R. Smith, et al*
Originating Case No.: 2:15-cv-00116

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely,

s/Antoinette Macon
Case Manager
Direct Dial No. 513-564-7015

cc: Ms. Pamela Sue Lorch
Mr. John L. Medearis
Mr. Daniel Thomas Swanson

Enclosure

No. 20-5259

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JASPER LEE VICK,

Plaintiff-Appellant,

v.

R. SMITH, et al., in their Individual and Official Capacities,

Defendants,

and

CLEMENT F. BERNARD, et al., in their Individual and Official Capacities,

Defendants-Appellees.

ORDER

Before: COOK, Circuit Judge.

Jasper Lee Vick, a pro se Tennessee prisoner, appeals the district court's judgment in favor of the defendants on his First Amendment retaliation claim filed under 42 U.S.C. § 1983. Vick moves the court to proceed in forma pauperis on appeal.

This court may grant a motion to proceed in forma pauperis if it determines that an appeal would in fact be taken in good faith and the movant is indigent. *See Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). An appeal is not in good faith if it is frivolous and thus "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

An appeal in this case would be frivolous because Vick failed to adduce evidence from which a reasonable juror could conclude that the defendants' allegedly adverse treatment of him was related to his grievances. *See* Fed. R. Civ. P. 56(a); *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc).

There is no non-frivolous argument that the district court erred in denying Vick's motion for default judgment against defendants Bernard, Jennings, Linkous, and Combs because he had not properly served process on these defendants at the time he moved for judgment. *See Flint v. Willett*, No. 16-5304, 2016 WL 10592241, at *2 (6th Cir. Sept. 12, 2016); *Thompson v. Am. Home Assur. Co.*, 95 F.3d 429, 432-33 (6th Cir. 1996).

Finally, there is no non-frivolous argument that the district court erred in dismissing defendant Riegal from the case without prejudice pursuant to Federal Rule of Civil Procedure 4(m) because Vick failed to effect service of process on Riegal within ninety days of filing the complaint.

Accordingly, the court **DENIES** Vick's motion to proceed in forma pauperis. Unless Vick pays the $505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JASPER LEE VICK,	*	
Appellant/Plaintiff,	*	
	*	
vs.	*	**No. 20-5259 (asm)**
	*	**Civil Case: 2:15-116-JRG-MCLC**
R. SMITH, et al.,	*	
Appellees/Defendants.	*	

****

MOTION TO CORRECT CLERICAL ERROR[1]
IN APPELLANT'S RESPONSE TO ORDER FILED JUNE 25, 2020

****

Comes now Appellant/Plaintiff Jasper Lee Vick, (TDOC #139471), acting pro se, [unlearned in law], without waiving any substantial right or issues presented for appeal, would submit a response to the Order filed June 25, 2020, in the above style cause as follows:

The Appellant, upon filing a timely Notice of Appeal, with the Court on February 24, 2020.

On March 23, 2020, Appellant Vick, returned to the Court "Motion for Pauper Status" "Affidavit Accompanying Motion for Permission to Appeal in forma Pauperis" with attached "Prison Trust Fund Affidavit."

Further in response to the Order filed June 25, 2020, the Appellant asserts the following:

1. The District Court incorrectly decided the facts and misapplied part three of the Sixth

1 Clerical Error is lacated at ¶ #4, I - IV, see ¶#4, I - IV for the clerical error of what ¶#4, I - IV now reads and what ¶#4, I - IV should read. (No attachments are included, as no error existed.)

Circuit retaliation claim, causation, the third element. The third element is satisfied if "the adverse action was motivated at least in part by the Plaintiff's protected conduct." The District Court improperly shifts the burden of proof to the Appellant Vick, in its Order Doc 159. The District Court states: (In part):

> "**The Centurion Defendants, for the purpose of the motion for summary judgment, do not dispute the events that took place on August 18, 2014. In fact, Dr. Bernard does not dispute that he had a conversation with Plaintiff about the smart remark and threatened time in medical segregation ... The Centurion Defendants, for the purpose of this motion, concede that Plaintiff satisfied the first two elements. [Doc. 131, PageID 1059]. But they argue that Plaintiff cannot establish the third element when viewing the evidence in the light most favorable to Plaintiff, entitling them to summary judgment.**" [Doc. 159].

Appellant/Plaintiff is entitled to summary judgment as a matter of law, because Appellant/Plaintiff established that his protected conduct was a motivation factor behind any harm:

First: The Appellant/Plaintiff assert that this Court held: (In part):

> **"[S]ince there is no justification for harassing people for exercising their constitutional rights[the deterrent effect] need not be great in order to be actionable." Brown v. Crowley; Thaddeus-X, 175 F.3d 782, 789 (6th Cir. 2002).**

Appellant/Plaintiff is retaliated against due to oral and written grievances [Doc. 1, 15-16].

On August 18, 2014, there were no valid reason, or a legitimate governmental objective for Appellant/Plaintiff Vick's placement in medical segregation by Appellees/Defendants, et .al., because Appellant/Plaintiff had his annual physical exam on or about July 10, 2014, Appellees/Defendants did not follow TN CORRECTION-TDOC INFIRMARY PROTOCOL-POLICY AND PROCEDURE. VI (A), (B), prior to Appellant's/Plaintiff's placement in medical segregation which clearly states:

> **VI (A)** "The LPN, RN, NP, or PA will perform initial assessment of the injured/ill inmate to determine if infirmary care is appropriate. The assessment will be documented in the medical record"; and
> **VI (B)** clearly states: "Upon completion of the initial assessment the LPN, RN, NP, or PA will contact the physician with the assessment result to obtain admission orders." [See Exhibit – E]. [2]

2 See Memorandum of Law in Support of Motion for Summary Judgment Exhibit(s) A thru J, were contemporaneously file with the District Court (excerpts) from Defendants discovery.

This medical segregation placement followed oral and written grievance(s). [Doc. 1, fifth cause of action 15-16], and according to Georgia Crowell TDOC Health Administrator, she states:

> **"Mr. Vick is a chronic care patient and seen every three months by health care provider. The most recent chronic care appointment was 7/14/14, at which time, he received his annual physical exam. Blood sugar are monitored and lab work done on a regular basis. All diabetics are followed closely and the doctor uses his medical judgment in treating all patients. Inmates have a responsibility to actively take part in their care, treatment plan and compliance."** [Doc 1, Exhibit - #2; Exhibit - #3 at Exhibit - #1]."

Appellant's/Plaintiff's next chronic care appointment would follow ninety (90) days, on or about, October 14, 2014, [Doc. 1, Exhibit - #2; Exhibit - #3, at Exhibit - #1], Appellant's/Plaintiff's medical segregation placement was punitive and without a legitimate governmental objective or a just cause. [Doc. 1, at 17].

The TDOC Health Administrator Georgia Crowell further States:

> **"Medical decisions and treatment is not and should never be ordered a a punishment or retaliation. ... Our goal is to provide the correct and best treatment for all inmates assigned at NECX. To assure we all have the same understanding this has been addressed with medical staff. Georgia Crowell "** [Doc. 1, at 12].

2. The District Court misapplied the law under Brown and Thelen, to Appellant Vick's retaliation claim, under causation, the third element. In Maben v. Thelen, this Court held: (In part):

> **"Under the third element, "[u]sually, the question of causation is a factual issue to be resolved by a jury, and may be satisfied by circumstantial evidence." Harris v. Bornhost, 513 F.3d503, 519-20 (6th Cir. 2008) (citing Hartsel v. Keys, 87 F.3d 795, 803 (6th Cir. 1996)). "Nonetheless, a court may grant summary judgment even in a causation inquiry, where it is warranted." Hartsel, 87 F.3d at 803 (citing Langford v. Lane, 921 F.2d 677, 683-84 (6th Cir. 1991)). "Once the plaintiff has met his burden of establishing that his protected conduct was a motivating factor behind any harm, the burden of production shifts to the defendant." Thaddeus-X, 175 F.3d at 399 (citing Mount Healthy, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471). "If the defendant can show that he would have taken the same action in the absence of the protected activity, he is entitled to prevail on summary judgment." Id."** *MABEN v. THELEN*, 887 F.3D 252, (6th Cir. 2018).

Second: Documentation in Appellant's Memorandum of Law in Support of Motion for Summary Judgment [Exhibit – B] contemporaneously filed with the District Court. On August 18, 2014, Appellees/Defendants, et al., while acting under color of state law with deliberate indifference to

Appellant's Constitutional right First, and Fourteenth Amendments acted in concert together with one another to violate those rights, and retaliated against Appellant/Plaintiff' to cause actual imminent irreparable harm, or possible death, and ignored Appellant's medical records/files and medical facts, communications in response to Appellant's/Plaintiff's oral and written grievances for redress [Doc. 1, 15-16], and changed Appellant's insulin intake to oral medication, specifically, the drug ***metformin*** and were with, and or had advance knowledge, notice, or warning, or information sufficient, that the drug ***metformin*** may cause imminent physical harm to Appellant.[Doc. 1, at 15-16].

Appellant's/Plaintiff's medical records/files and medical facts, communications clearly states: (In part): "August 14, 2012, Doctor's Order: "**Will D/C[3] metformin not controlling BS will start Levemir August 20, 2012, ... "Pt. Also will be notified to quit metformin. Hb A1C 16.7 7/30/12.**" [See Memo of Law Exhibit – B], contemporaneously filed with the District Court.

Third: In response to Appellant's/Plaintiff's grievance(s) for a redress, Appellees/Defendants, et. al., [Exhibit – D, MEMO of Law], (contemporaneously filed with the District Court), took the following deterrent actions to: **["Discontinue BS checks and all insulin.[4] ... No KOP."]**

Appellee/Defendant deterrent acts goes as far as, to <u>not</u> give any information to Appellant/Plaintiff "<u>with regard to medication given or future lab studies</u>" **["8/20/14 I/M is <u>not</u> to be given any information WRT[5] meds given or future lab studies"], Security is to be called at the first sign of I/M becoming argumentative, overly demanding.[6] HgA1C in 3mo 11-1914, I/M is not**

3 August 14, 2012 Doctor's Orders **D/C** (Discontinue) **metformin not controlling BS** (Blood Sugar) **will start Levemir** (insulin) **<u>August 20, 2012, Pt.</u>**(Patient) **<u>Also will be notified to quit metformin. Hb A1C 16.7 7/30/12.</u>**

4 Plaintiff is a Type II diabetic and **<u>can not survive</u>** without some form of insulin, that does not contain the drug metformin. To place Appellant/Plaintiff in medical segregation and discontinue Blood Sugar (BS) checks, and all insulin, served no governmental objective, Defendants, et al., disregarded a substantial risk of harm, that could resulted in unduly death of the Appellant/Plaintiff, and is equivalent to a death sentence.

5 "8/20/14 IM is **<u>not</u>** to be given any information "WRT" (with regard to) meds given or future lab studues." According to Health Administrator Georgia Crowell "Inmates have a responsibility to actively take part in their care, treatment plan and compliance."

6 Security is to be called at the first sign of I/M becoming argumentative, or overly demanding." Defendants, et al., did not respond reasonably to Appellant's/Plaintiff's serious medical need (i.e., Type II, diabetes), and in retaliation, were with, and or had advance knowledge, notice, or warning, or information sufficient that Appellant/Plaintiff was "**<u>notified to quit metformin</u>**" and that "**prolonged uncontrolled high blood sugar and low blood sugar, can among other things**

to be given any form of insulin unless approved by Dr. Bernard. All meds are D/C; No KOP.[7] C. Bernard 8/20/14, Discontinue BS checks and all insulin VORB Dr. Bernard | Stephanie Carmody Noted 8/20/14 @ 1730 Stephanie Carmody"].

The Appellant/Plaintiff is a Type II diabetic, **cannot** survive without some form of insulin. [Exhibit – D], (contemporaneously filed with the District Court).

The Appellant/Plaintiff placement in medical segregation August 18, 2014, followed his protected conduct for a redress of grievance of inadequate medical care of placing diabetics in medical segregation whose blood sugar went over 250-350 points. [Doc. 1, 12-15; Exhibit - #5]. Thus the motivating factor behind any harm to deter Appellant/Plaintiff from continuing in his protected conduct.

In Adams v Baker, (6th Cir. 2019) this Court held: (In part):

> **"The third element of a First-Amendment retaliation claim "addresses whether the defendants' subjective motivation for taking the adverse action was at least in part to retaliate against the [plaintiff] for engaging in protected conduct." Hill, 630 F.3d at 475; Smith, 250 F.3d at 1037. "[A]n act taken in retaliation for the exercise of a constitutionally protected right is actionable under ⊏ 1983 even if the act, when taken for a different reason, would have been proper." Bloch v. Ribar, 156 F.3d 673, 681-82 (6th Cir. 1998). "Because the question is whether the adverse action was taken (at least in part) because of the protected conduct, the causation inquiry centers on the defendant's motive." Thomas, 481 F.3d at 441. Because "[m]otive is often very difficult to prove with direct evidence in retaliation cases . . . [,] circumstantial evidence may therefore acceptably be the only means of establishing the connection between a defendant's actions and the plaintiff's protected conduct." King, 680 F.3d at 696. Allegations{2019 U.S. Dist. LEXIS 32} supporting the existence of a retaliatory motive can include "the disparate treatment of similarly situated individuals or the temporal proximity between the [plaintiff's] conduct and the official's adverse action." Hill, 630 F.3d at 475. In some cases, "temporal proximity alone may be significant enough to constitute indirect evidence of a causal connection so as to create an inference of retaliatory motive." Muhammad v. Close, 379 F.3d 413, 417-18 (6th Cir. 2004)."**

---

result in change in mental status, ketoacidosis, and can affect brain and kidney function" and **possible death.** [See Exhibit I], notwithstanding the fact that every diabetic, or any patient have an absolute right to be informed "WRT" meds taken and especially Lab Reports as a diabetic Condition.

7 "KOP" (Keep on Person) medication. In 2010, the Appellant/Plaintiff was prescribed KOP medication and forewarned of the deadly consequences if not taken as prescribed.

Defendants, et al.,/Appellees, et al., did not respond reasonably to Appellant's/Plaintiff's grievances, or serious medical need (i.e., Type II, diabetes), and intentionally denied, delayed, and intentionally interfered with Appellant's/Plaintiff's medical treatment, acted in concert together with one another and in retaliation, were with, and or had advance knowledge, notice, or warning, or information sufficient, that their actions and inaction were illegal and that prolonged uncontrolled high blood sugar and low blood sugar, can among other things result in "**change in mental status**, ketoacidosis, and **can affect brain and kidney function and possible death**." [See Exhibit – I (Interrogatory No. 12)]:

> INTERROGATORY NO. 12:" As a contract employee and/or State employee, medical professional, do you know the effect of prolonged high blood-glucose/hyperglycemia and the effect of low blood-glucose/hypoglycemia? If so, explain their effect(s)."
>
> RESPONSE: "**Dr. Bernard objects to this Interrogatory on the grounds that it is not relevant to the claims and defenses in this matter and is overly broad and burdensome in that it is not proportional to the needs of the case. Subject to and without waiving these objections, Dr. Bernard states that uncontrolled high-blood glucose and low-blood glucose can, among other things, result in a change in mental status, ketoacidosis, and can affect brain and kidney function. Dr. Bernard further states that any uncontrolled high or low-blood glucose that Plaintiff suffered was the result of his non-compliance with his treatment plan and was not the result of his treatment plan.**" [Exhibit – I].
>
> However, the TDOC Health administrator Georgia Crowell states:
>
> "**Inmates have a responsibility to actively take part in their care, treatment plan and compliance.**" [Doc 1, Exhibit - #2]. which was denied to the Appellant/Plaintiff, see [Exhibit – D; note 4 above]

Appellant/Plaintiff and all diabetics should always be provided information "**with regard to**" medications taken, lab studies, and their overall treatment and plan, to avoid future diabetic complications that can among other things result in change in mental status, ketoacidosis, and can affect brain and kidney function and possible death.

On August 20, 2014, Dr. Bernard issued an order to his medical staff that: "**8/20/14 Security is to be called at the first sign of I/M becoming argumentative, overly demanding.**" [Exhibit – D]. However, Appellant/Plaintiff sought mental health care, see [Exhibit – G], instead of "**becoming**

argumentative, overly demanding" to try and adjust to the **retaliatory** deprivation of adequate medical care for filing grievance.

Because the question is whether the adverse action was taken (at least in part) because of the protected conduct, the causation inquiry centers on the defendant's motive.

On August 18, 2014, there were no valid reason, or a legitimate governmental objective for Appellant/Plaintiff Vick's placement in medical segregation by Appellees/Defendants, et .al., because Appellant/Plaintiff Vick is a chronic care patient and seen every three months by health care provider. The most recent chronic care appointment was July 14, 2014, at which time, he received his annual physical exam[Doc. 1, Exhibit - #2], and the next exam would be in October 2014;

August 18, 2014, Appellees/Defendants did not follow TN CORRECTION-TDOC INFIRMARY PROTOCOL-POLICY AND PROCEDURE. VI (A), (B), prior to Appellant's/Plaintiff's placement in medical segregation [Exhibit - E]; and

Appellees/Defendants were with, and or had advance knowledge, notice, or warning, or information sufficient that Appellant's/Plaintiff's previously prescribed plan of treatment prohibited the taking of the drug metformin, Appellant/Plaintiff is a Type II diabetic and **can not survive** without some form of insulin, that does not contain the drug metformin.[See note 2 above].

3. Appellant/Plaintiff feel that the District Court's judgment was wrong:

The Appellees/Defendants present the bare assertion that Appellant/Plaintiff "**was artificially inflating his blood sugar through non-compliance with his medical plan and diabetic diet.**" [Doc. 159, 13]. Appellees/Defendants offer no documentation proof, of Appellant's/Plaintiff's "**non-compliance with his medical plan and diabetic diet**" prior to August 20, 2014.

The deterrent of Constitutional right by Appellee/Defendant, the Appellant/Plaintiff was being forced to take the deadly drug metformin, because of his oral and written grievances for a redress [Doc. 1, 15-16], and being placed in medical segregation without food, or a way to call for, or get help in the

event of an emergency, thus having no way of "**artificially inflating his blood sugar through non-compliance with his medical plan and diabetic diet.**" [Doc. 159, 13].

The Appellant/Plaintiff took the drug metformin[8] as prescribed by Dr. Bernard and became ill, mentally challenged, and physically ill with diabetic complications from the retaliatory acts. [Doc. 1, at 14-17].

It is undisputed fact that protected conduct, of grievance filed by the Appellant/Plaintiff for deprivation of adequate medical care, was the motivating factor behind any harm mention herein.

Appellee/Defendants should not be granted summary judgment.

This Court reviews a district court's grant of summary judgment de novo. Gillis, 845 F.3d at 683. Summary judgment is proper "if the Movant shows that there is no genuine dispute as to any material fact and the Movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a)." **Maben v. Thelen**, 887 F.3d 252 (6th Cir. 2018).

Appellees/Defendants have not meet their burden of proof, and the Appellant is entitled to summary judgment as a matter of law, and request that the case be Remanded for trial.

In response to the Court Order "**The Court DENIES Vick's motion to proceed in forma pauperis. Unless Vick pays the $505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.**" Vick assert that, this Court held: (In part):

In **Clifton v. Carpenter**, "to bar plaintiff from initiating an application for leave to appeal from the original complaint ... filed in the court would violate the Equal Protection Clause of the Fourteenth Amendment" See Smith v. Bennett, 365 U.S. 708, 81 S.Ct. 895, 6 L.Ed.2d 39 (1961).

This Court further states:

---

8 See note 2 above. Appellees/Defendants were with, and or had advance knowledge, notice, or warning, or information sufficient that Appellant's/Plaintiff's previously prescribed plan of treatment prohibited the taking of the drug metformin: "August 14, 2012, Doctor's Order: "**Will D/C metformin not controlling BS will start Levemir August 20, 2012, ... "Pt. Also will be notified to quit metformin. Hb A1C 16.7 7/30/12.**"

"The Supreme Court has long held that procedures which limit an indigent defendant's access to the courts, where that limitation could result in a deprivation of liberty, are constitutionally deficient ... Destitute defendants must be afforded as adequate appellate review as defendants who have money ... Access to the courts cannot be contingent on wealth. Griffin and its progeny clearly provide that indigent defendants, whose liberty is on the line, cannot receive less process because of their pauper status. Smith makes it clear that these protections even apply in collateral proceedings. The Supremacy Clause forbids ... a rule to trump the fundamental requirements of the United States Constitution. U.S. Const. Art. VI, cl. 2. Doan, 237 F.3d at 728" See **Clifton v. Carpenter**, 775 F.3d 760 (6th 2014).

The Appellant is prepared to pay the initial partial filing fee of twenty percent of the greater of the average monthly (1) deposit to the inmate's trust account, or (2) balance in the account for the six-month period preceding the filing, until the filing fee is paid in full.

(THIS PARAGRAPH #4, I - IV IN ERROR NOW READS)

4. The Appellant/Plaintiff wish to present the following issues for appeal:

I. Whether there is a temporal proximity between Plaintiff's protected conduct and the Sixth Amendment retaliation act of placement in medical segregation.

II. Whether Appellant/Plaintiff satisfied the Sixth Circuit third element of causation in his Sixth Amendment retaliation claim.

III. Whether Appellant/Plaintiff is entitled to default judgment against Defendants Linkous, Combs, Bernard and Jennings.

IV. Whether the District Court improperly dismissed Defendant Riegal, and manipulated the rules to favor the Defendants.

(PARAGRAPH #4, I - IV SHOULD READ AS FOLLOWS):

4. The Appellant/Plaintiff wish to present the following issues for appeal:

I. Whether there is a temporal proximity between Plaintiff's protected

conduct under the First Amendment and the Sixth Circuit's, third element (causation) retaliation act of Appellant Vick's placement in medical segregation.

II. Whether Appellant/Plaintiff satisfied the Sixth Circuit third element of causation in his First Amendment retaliation claim.

III. Whether Appellant/Plaintiff is entitled to default judgment against Defendants Linkous, Combs, Bernard and Jennings.

IV. Whether the District Court improperly dismissed Defendant Riegal, and manipulated the Federal Federal Rules of Civil Procedure to favor the Defendants.

5. The Appellant/Plaintiff request the Court of Appeals to grant the following:

i). Remand the Case to the District Court for further proceedings.

ii). Remand the case for jury to resolve the issue of causation.

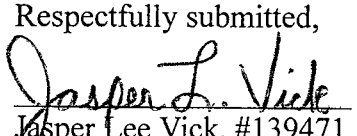
iii). Remand the case with specific instruction consistent with this Court's Opinion.

iv). Allow Appellant/Plaintiff to proceed in forma pauperis.

v). Appellant/Plaintiff request that this Court to not hold the Appellant/Plaintiff to the standard of a trained attorney, but a layperson, and grant just and appropriate relief as the law and justice demand. REMAND for trial.

Respectfully submitted, this September 11, 2020.

Respectfully submitted,



Jasper Lee Vick, #139471
2520 Union Springs Road
Whiteville, TN 38075
X.c.: F. #20-057
Rev err. X.c.: Fl. #20-080

CERTIFICATE OF SERVICE

I hereby (certify, verify or state) under the penalty of perjury that a true and exact copy of the "**MOTION TO CORRECT CLERICAL ERROR IN APPELLANT'S RESPONSE TO ORDER FILED JUNE 25, 2020** " has been given to prison authorities this September 11, 2020, to be forwarded to:

STATE OF TENNESSEE
Pamela Lorch
PO BOX 20207
NASHVILLE, TN 37202

LONDON AND AMBURN, PC
607 MARKET STREET
SUITE 900
KNOXVILLE, TN 37902

via prepaid first class U.S. Postage this September 11, 2020.

Jasper Vick

Jasper Vick

APPENDIX - B

20-5259

Jasper Lee Vick
#139471
Hardeman County Correctional Facility
P.O. Box 549
Whiteville, TN 38075

No. 20-5259

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JASPER LEE VICK,

Plaintiff-Appellant,

v.

R. SMITH, et al., in their Individual and Official Capacities,

Defendants,

and

CLEMENT F. BERNARD, et al., in their Individual and Official Capacities,

Defendants-Appellees.

ORDER

Before: ROGERS, NALBANDIAN, and MURPHY, Circuit Judges.

Jasper Lee Vick, a pro se Tennessee prisoner, moves the court to reconsider its order of June 25, 2020, denying his motion to proceed in forma pauperis on appeal.

Vick has not shown that the court overlooked or misapprehended a point of law or fact in denying him leave to proceed in forma pauperis. *See* Fed. R. App. P. 40(a)(2).

Accordingly, we **DENY** his motion for reconsideration.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: August 26, 2020

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Nashville, TN 37202-0207

Mr. Daniel Thomas Swanson
London Amburn
607 Market Street
Suite 900
Knoxville, TN 37902

Mr. Jasper Lee Vick
Hardeman County Correctional Facility
P.O. Box 549
Whiteville, TN 38075

Re: Case No. 20-5259, *Jasper Vick v. R. Smith, et al*
Originating Case No.: 2:15-cv-00116

Dear Mr. Vick and Counsel,

The Court issued the enclosed Order today in this case.

Sincerely,

s/Antoinette Macon
Case Manager
Direct Dial No. 513-564-7015

Enclosure

20-5259

Jasper Lee Vick
#139471
Hardeman County Correctional Facility
P.O. Box 549
Whiteville, TN 38075

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: March 09, 2020

Jasper Lee Vick
Hardeman County Correctional Facility
P.O. Box 549
Whiteville, TN 38075

Re: Case No. 20-5259, *Jasper Vick v. R. Smith, et al*
Originating Case No. : 2:15-cv-00116

Dear Mr. Vick,

This appeal has been docketed as case number **20-5259** with the caption that is enclosed on a separate page. The appellate case number and caption must appear on all filings submitted to the Court.

This court must determine the appellate fee status of each new appeal. The district court's grant of pauper status at the beginning of the case does not automatically carry over to the appeal. A new determination is necessary.

The district court has certified that an appeal would not be taken in good faith and/or denied you leave to proceed on appeal *in forma pauperis*. As the appellant, you are responsible for paying the $505.00 filing fee for this appeal. If you cannot pay the fee in one lump sum, you may file a motion for pauper status. You have until **April 8, 2020** to either pay the $505.00 appellate filing fee to the **U.S. District Court**, or complete and return the enclosed motion for leave to proceed on appeal *in forma pauperis*, along with a financial affidavit and six-month prison trust account statement with the **United States Court of Appeals for the Sixth Circuit**. **Failure to do one or the other may result in the dismissal of the appeal without further notice.**

At this stage of the appeal, appellee should complete and file the following forms with the Clerk's office by **March 23, 2020**. More specific instructions are printed on each form.

Appellee: Appearance of Counsel
Application for Admission to 6th Circuit Bar (if applicable)

Appellee counsel will docket pleadings as an ECF filer. Before preparing any documents to be filed, counsel are strongly encouraged to read the Sixth Circuit Rules at www.ca6.uscourts.gov. If counsel has not established a PACER account and registered with this court as an ECF filer, you should do so immediately.

The Clerk's office cannot give pro se litigants legal advice but questions about the forms or electronic case filing may be directed to the case manager.

Sincerely,

s/Antoinette Macon
Case Manager
Direct Dial No. 513-564-7015

cc: Ms. Pamela Sue Lorch
Mr. Daniel Thomas Swanson

Enclosure

OFFICIAL COURT OF APPEALS CAPTION FOR 20-5259

JASPER LEE VICK

Plaintiff - Appellant

v.

R. SMITH, et al, in their Individual and Official Capacities

Defendant

and

CLEMENT F. BERNARD; ANGELA COMBS; BETH JENNINGS; N. RIEGAL; L. FARET; STEPHANIE CARMADY; NATALIE LINKINS, in their Individual and Official Capacities

Defendants - Appellees

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JASPER LEE VICK

v.

R. SMITH, ET AL

Case No: 20-5259 (asm)

MOTION FOR PAUPER STATUS

I move to waive the payment of the appellate filing fee under Fed. R. App. P. 24 because I am a pauper. This motion is supported by the attached financial affidavit.

The issues which I wish to raise on appeal are:

I. Whether there is a temporal proximity between Plaintiff's protected conduct and the Sixth Amendment retaliation act of placement in medical segregation.

II. Whether Plaintiff satisfied the Sixth Circuit third element of causation in his Sixth Amendment retaliation claim.

III. Whether Plaintiff is entitled to default judgment against Defendants Linkous, Combs, Bernard, and Jennings.

IV. Whether the District Court improperly dismissed Defendant Riegal, and manipulated the Rules to favor the Defendants.

Signed: Jasper L. Vick Date: March 23, 2020

Address: 2520 Union Springs Road

Whiteville, Tennessee 38075

X.c.: Fl. #20-025

FORM 4.

AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

United States Court of Appeals for the Sixth Circuit

JASPER LEE VICK]
]

v.]

R. SMITH, ET AL]
]

Case No: 20-5259 (asm)

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. §§ 1746; 18 U.S.C. §§ 1621.)

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Signed: Jasper L. Vick

Date: March 23, 2020

X.c.: Fl. # 20-025

My issues on appeal are:

I. Whether there is a temporal proximity between Plaintiff's protected conduct and the Sixth Amendment retaliation act of placement in medical segregation.

II. Whether Plaintiff satisfied the Sixth Circuit third element of causation in his Sixth Amendment retaliation claim.

III. Whether Plaintiff is entitled to default judgment against Defendants Linkous, Combs, Bernard, and Jennings.

IV. Whether the District Court improperly dismissed Defendant Riegal, and manipulated the Rules to favor the Defendants.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	N/A	N/A	N/A	N/A
Self-employment	N/A	N/A	N/A	N/A
Income from real property (such as rental income)	N/A	N/A	N/A	N/A
Interest and dividends	N/A	N/A	N/A	N/A
Gifts	N/A	N/A	N/A	N/A
Alimony	N/A	N/A	N/A	N/A
Child support	N/A	N/A	N/A	N/A
Retirement (such as social security, pensions, annuities, insurance)	N/A	N/A	N/A	N/A
Disability (such as social security, insurance payments)	N/A	N/A	N/A	N/A
Unemployment payments	N/A	N/A	N/A	N/A
Public-assistance (such as welfare)	N/A	N/A	N/A	N/A
Other (specify): N/A	N/A	N/A	N/A	N/A
Total monthly income:	$ 0.00	$ 0.00	$ 0.00	$ 0.00

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

4. How much cash do you and your spouse have? $ N/A

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount You Have	Amount Your Spouse Has
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real estate (Value)	Motor Vehicle #1 (Value)
NONE	NONE	Make & year: NONE
NONE	NONE	Model: NONE
NONE	NONE	Registration #: NONE

Motor Vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & year: NONE	NONE	NONE
Model: NONE	NONE	NONE
Registration #: N/A	NONE	NONE

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home)	0	0
Are real estate taxes included? ☐Yes ☒No Is property insurance included? ☐Yes ☒No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	0	0
Home maintenance (repairs and upkeep)	0	0
Food	0	0
Clothing	0	0
Laundry and dry-cleaning	0	0
Medical and dental expenses	0	0
Transportation (not including motor vehicle expenses)	0	0
Recreation, entertainment, newspapers, magazines, etc.	0	0
Insurance (not deduced from wages or included in mortgage payments) Homeowner's or renter's	0	0
Life	0	0
Health	0	0
Motor vehicle	0	0
Other:	0	0
Taxes (not deducted from wages or included in mortgage payments) specify: N/A	0	0
Installment payments	0	0
Motor Vehicle	0	0
Credit card (name): N/A	0	0
Department store (name): N/A	0	0
Other: N/A	0	0
Alimony, maintenance, and support paid to others	0	0
Regular expenses for operation of business, profession, or farm (attach detail)	0	0
Other (specify): N/A	0	0
Total monthly expenses:	$ 0.00	$ 0.00

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you spent or will you be spending any money for expenses or attorney fees in connection with this lawsuit?

☐ Yes ☑ No If yes, how much? $

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

I have been incarcerated since 2002. (See the attached "PRISON TRUST FUND AFFIDAVIT").

12. State the address of your legal residence.

I have no current legal address.

Your daytime phone number: ( ) NONE

Your age: 66 Your years of schooling: GED

CORE CIVIC
HARDEMAN COUNTY CORRECTIONAL FACILITY
2520 UNION SPRINGS ROAD
(POST OFFICE BOX 549)
WHITEVILLE, TENNESSEE 38075

PRISON TRUST FUND AFFIDAVIT

INMATE NAME: Jasper Lee Vick

TDOC NUMBER: 139471

NOTICE TO PRISONER: A prisoner seeking to proceed IFP (In forma Pauperis) shall submit an affidavit stating all assests. In addition, a prisoner must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts.
If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

CERTIFICATE

(Incarcerated applicants only)
(To be completed by the institution of incarceration)

I certify that the applicant named herein has the sum of $ 0 on account

to his/her credit at HARDEMAN COUNTY CORRECTION FACILITY.

I further certify that the applicant has the securities to his/her credit 0. I further certify

that during the past six months, the applicant's deposited average balance was $ 3.75.

I, Christine Smith (Acct Clerk), am a CoreCivic employee, who serves as the Inmate Trust Fund Custodian for prisoners at the Hardeman County Correction Facility. By my signature below, I certify that the attached computer printout of the named prisoner is true and correct in designating his trust account activity for the past six (6) months with the Department of Correction.

03-16-20 Christine Smith
DATE SIGNATURE OF AUTHORIZED OFFICER; TRUST FUND CUSTODIAN

THE TRUST FUND TRANSACTION PRINTOUTS MUST BE SENT WITH YOUR TRUST FUND AFFIDAVIT TO THE COURTS.

BI21A46 TRUST FUND TRANSACTIONS DATE: 03/16/20
SELECT TIME: 01:53

Account: 00139471 VICK SPER L. Actual Site: HCCF
Status: ACTV Sex: M Race: B Age: 65 Assigned Site: HCCF
Current Balance: Pending Balance:

S	Trans Date	Seq No	Transaction Type/Code/Amount		Trans Site	Current Amount	Pend Amount
	03/12/2020	5	D APP	2.69	HCCF		
	03/12/2020	4	D POS	12.40	HCCF	2.69	
	03/12/2020	3	D NOT	1.00	HCCF	15.09	
	03/12/2020	2	D COP	0.25	HCCF	16.09	
	03/12/2020	1	C PAD	16.32	HCCF	16.34	
	02/13/2020	7	D POS	1.50	HCCF	0.02	
	02/13/2020	6	D POS	2.10	HCCF	1.52	
	02/13/2020	5	D POS	2.45	HCCF	3.62	
	02/13/2020	4	D POS	3.80	HCCF	6.07	
	02/13/2020	3	D APP	3.27	HCCF	9.87	

Search:
NEXT FUNCTION: DATA:
F1-HELP F8-PAGEDOWN F9-QUIT F11-SUSPEND

TOP OF LIST

BI21A46 TRUST FUND TRANSACTIONS SELECT DATE: 03/16/20 TIME: 01:53

Account: 00139471 VICK SPER L. Actual Site: HCCF
Status: ACTV Sex: M Race: B Age: 65 Assigned Site: HCCF
Current Balance: Pending Balance:

S	Trans Date	Seq No	Transaction Type/Code/Amount		Trans Site	Current Amount	Pend Amount
	02/13/2020	2	D FFF	3.27	HCCF	13.14	
	02/13/2020	1	C PAD	16.32	HCCF	16.41	
	01/14/2020	4	D COM	6.03	HCCF	0.09	
	01/14/2020	3	D APP	2.04	HCCF	6.12	
	01/14/2020	2	D FFF	2.04	HCCF	8.16	
	01/14/2020	1	C PAD	10.20	HCCF	10.20	
	12/10/2019	8	D APP	3.17	HCCF		
	12/10/2019	7	D POS	5.00	HCCF	3.17	
	12/10/2019	6	D POS	4.00	HCCF	8.17	
	12/10/2019	5	D POS	1.00	HCCF	12.17	

Search:
NEXT FUNCTION: DATA:
F1-HELP F4-FIRST F7-PAGE UP F8-PAGEDOWN F9-QUIT F11-SUSPEND

BI21A46 SELECT TIME: 01:53

Account: 00139471 VICK SPER L. Actual Site: HCCF
Status: ACTV Sex: M ...ce: B Age: 65 ...signed Site: HCCF
Current Balance: Pending Balance:

S	Trans Date	Seq No	Transaction Type/Code/Amount		Trans Site	Current Amount	Pend Amount
	12/10/2019	4	D POS	4.00	HCCF	13.17	
	12/10/2019	3	D POS	1.45	HCCF	17.17	
	12/10/2019	2	D POS	1.80	HCCF	18.62	
	12/10/2019	1	C PAD	20.40	HCCF	20.42	
	11/18/2019	1	D COM	0.89	HCCF	0.02	
	11/07/2019	5	D POS	1.95	HCCF	0.91	
	11/07/2019	4	D POS	1.00	HCCF	2.86	
	11/07/2019	3	D POS	1.95	HCCF	3.86	
	11/07/2019	2	D POS	10.65	HCCF	5.81	
	11/07/2019	1	C PAD	16.32	HCCF	16.46	

Search:
NEXT FUNCTION: DATA:
F1-HELP F4-FIRST F7-PAGE UP F8-PAGEDOWN F9-QUIT F11-SUSPEND

BI21A46 SELECT TIME: 01:53

Account: 00139471 VICK \SPER L.
Status: ACTV Sex: M ce: B Age: 65 Actual Site: HCCF
Current Balance: Pending Balance: Assigned Site: HCCF

S	Trans Date	Seq No	Transaction Type/Code/Amount		Trans Site	Current Amount	Pend Amount
	10/15/2019	7	D POS	0.50	HCCF	0.14	
	10/15/2019	6	D POS	4.10	HCCF	0.64	
	10/15/2019	5	D POS	5.45	HCCF	4.74	
	10/15/2019	4	D POS	1.30	HCCF	10.19	
	10/15/2019	3	D APP	3.68	HCCF	11.49	
	10/15/2019	2	D FFF	3.68	HCCF	15.17	
	10/15/2019	1	C PAD	18.36	HCCF	18.85	
	09/17/2019	1	D COM	9.51	HCCF	0.49	
	09/13/2019	1	D POS	0.50	HCCF	10.00	
	09/12/2019	3	D APP	2.86	HCCF	10.50	

Search:
NEXT FUNCTION: DATA:
F1-HELP F4-FIRST F7-PAGE UP F8-PAGEDOWN F9-QUIT F11-SUSPEND

APPENDIX - C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

JASPER LEE VICK, Plaintiff, vs. C. BERNARD, *et al.* Defendants	)	2:15-CV-00116-JRG

REPORT AND RECOMMENDATION

Plaintiff has filed a motion [Doc. 48], which the Court has construed as a Motion for Default Judgment and on March 26, 2018, the District Court entered an Order of Reference to the undersigned for a Report and Recommendation [Doc. 51]. Defendants have responded. The matter is now ripe for resolution.

On August 21, 2017, Plaintiff filed an Application for Clerk's default as to Defendants C. Bernard [Doc. 35], A. Combs [Doc. 36], B. Jennings [Doc. 37], and N. Linkous [Doc. 38]. In response to Plaintiff's applications, on September 12, 2017, the Clerk entered a default as to each Defendant [Docs. 40-43]. See Fed.R.Civ.P. 55(b)(1). On December 4, 2017, Plaintiff then filed this motion for default judgment [Doc. 48], requesting the Court enter default judgment against Defendants.

In response to that motion, Defendant Angela Combs filed motion to set aside the clerk's default and opposed Plaintiff's motion for default judgment [Doc. 52]. In her response, she avers that she did not willfully fail to appear and defend the case. In fact, she alleges she just learned of the lawsuit the week before April 9, 2018 [Doc. 52, pg. 1]. She claims that she has a meritorious

defense and that Plaintiff would not otherwise be prejudiced as he is still attempting service of process on the other Defendants. Plaintiff filed a response to that motion[1] [Doc. 54] objecting to the relief sought. The Court notes that the summons issued regarding A. Combs only indicates that the summons and complaint were mailed by FedEx on February 7, 2017 and that it was signed by "D. Barber" on February 13, 2017 as 12:37 [Doc. 54-1, pg. 6].

On April 20, 2018, the remaining Defendants, C. Bernard, N. Linkous, and B. Jennings filed a similar motion to set aside the entry of default and their response in opposition to Plaintiff's motion for default judgment [Doc. 57]. In their motion, they argue that they have not been properly served, noting that the summons and complaint were served on Dawn Barber, not on the individual Defendants [Doc. 57, pg. 1-2]. Plaintiff responded by filing a "Motion for Dismissal" of their motion [Doc. 63].

Defendants also argue that Fed.R.Civ.P. 55(c) permits the Court to "set aside an entry of default for good cause...." To determine good cause, the Court considers "whether (1) the default was willful, (2) a set-aside would prejudice plaintiff, and (3) the alleged defense was meritorious." *Dassault Systemes, SA v. Childress*, 663 F.3d 832, 838–39 (6th Cir. 2011)(quoting *United Coin Meter Co. v. Seaboard Coastline Railroad*, 705 F.2d 839, 844 (6th Cir. 1983)). Courts are instructed to employ "considerable latitude" when assessing the "good cause" standard under Fed. R. Civ. P. 55(c). *O.J. Distributing, Inc. v. Hornell Brewing Co., Inc.*, 340 F.3d 345, 353 (6th Cir. 2003); see also *United States v. Real Property & All Furnishings Known as Bridwell's Grocery & Video,* 195 F.3d 819, 820 (6th Cir. 1999). The Sixth Circuit has noted "a strong preference" for cases to be decided on the merits. *Shepard Claims Serv., Inc. v. William Darrah & Assoc.*, 796

[1] Plaintiff actually styled his response as a "Motion for Dismissal of Defendant Combs' Motion" in which he requests this Court deny Defendants' motion [Doc. 54].

F.2d 190,193-94 (6th Cir. 1986). "All three factors must be considered in ruling on a motion to set aside entry of default[,] [h]owever, when the first two factors militate in favor of setting aside the entry, it is an abuse of discretion for a district court to deny a Rule 55(c) motion in the absence of a willful failure of the moving party to appear and plead." *Id.* at 194.

Upon a review of the record, it does not appear that any of these Defendants' defaults were willful. These are employees of the Tennessee Department of Corrections at the relevant time in the Complaint, and it is not readily apparent that they were properly served. None of the defendants personally accepted service. Instead, the summons and complaints were all mailed to them at their place of employment and the intake officer, Dawn Barber, signed for them. They did not.

Setting aside the entry of default will not prejudice Plaintiff. Plaintiff still has two defendants he has not served, N. Riegal and L. Faret [Docs. 23, 24]. No discovery has occurred and Plaintiff has not specifically identified how he would be prejudiced if the Court were to permit the case to be resolved on the merits. Finally, Defendants allege that they each have a meritorious defense to the complaint. That is also a basis to grant the relief requested.

Given the Sixth Circuit's preference to resolve the case on the merits and given that the undersigned does not see any real justification for not setting aside the defaults, the undersigned RECOMMENDS that the Court take the following actions:

(1) DENY Plaintiff's motion for summary judgment, which this Court has construed as a motion for default [Doc. 48];
(2) GRANT Defendant's A. Combs motion to set aside default [Doc. 52];
(3) GRANT Defendants, C. Bernard, N. Linkous, B. Jennings motion to set aside default [Doc. 57];
(4) TERMINATE Plaintiff's motions to dismiss Defendants' motions [Docs. 54, 63] as these "motions" are, in essence, responses to Defendants' motions and should not be considered as motions, but considered as Responses to Defendants' motions.

Respectfully Submitted,[2]

s/Clifton L. Corker
United States Magistrate Judge

[2] Any objections to this report and recommendation must be served and filed within fourteen (14) days after service of a copy of this recommended disposition on the objecting party. Fed. R. Crim. P. 59(b)(2). Failure to file objections within the time specified waives the right to review by the District Court. Fed. R. Crim. P. 59(b)(2); *see United States v. Branch*, 537 F.3d 582 (6th. Cir. 2008); *see also Thomas v. Arn*, 474 U.S. 140, 155 (1985) (providing that failure to file objections in compliance with the time period waives the right to appeal the District Court's order). The District Court need not provide *de novo* review where objections to this report and recommendation are frivolous, conclusive, or general. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986). Only specific objections are reserved for appellate review. *Smith v. Detroit Federation of Teachers*, 829 F.2d 1370, 1373 (6th Cir. 1987).

APPENDIX-D

Jasper Lee Vick, #139471
South Central Correctional Center
P.O. Box 279
Clifton, TN 38425

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

JASPER LEE VICK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:15-CV-116-JRG-MCLC
	)	
C. BERNARD, *et al.*,	)	
	)	
Defendants.	)	

ORDER

This civil action is before the Court on Magistrate Judge Clifton L. Corker' Report and Recommendation ("R&R"), issued on June 7, 2018 [Doc. 68]. In the R&R, Magistrate Judge Corker has recommended that the Court deny Plaintiff's Motion for Default Judgment [*see* Doc. 48], grant the Motions to Set Aside Default filed by Defendants Combs, Bernard, Jennings, and Linkins [*see* Docs. 52, 57], and terminate Plaintiff's motions to dismiss Defendants' motions [*see* Docs. 54, 63]. Specifically, Magistrate Judge Corker found that these Defendants appear to have meritorious defenses to the Complaint and did not willfully default, and that setting aside default would not prejudice Plaintiff [Doc. 68 at 3]. Plaintiff objected to the R&R, and Defendants have now responded in opposition to those objections [Docs. 72, 74].

For the reasons set forth below, the Court will **ADOPT** the findings of fact and conclusions of law set forth in the R&R, **OVERRULE** Plaintiff's objections to the R&R, **DENY** Plaintiff's Motion for Default [Doc. 48], **TERMINATE** Plaintiff's Motion to Dismiss the Defendants' Motions to Set Aside Default [Docs. 54, 63], and **GRANT** the Defendants' Motions to Set Aside Default [Docs. 52, 57].

I. TIMELINESS OF PLAINTIFF'S OBJECTIONS

In the R&R, Magistrate Judge Corker advised the parties that they had fourteen days in which to file any objections to the R&R, and that "failure to file objections within the time specified waives the right to review by the District Court" [Doc. 68 at 4 n.2]. The Court received Plaintiff's objection to the R&R [Doc. 72] on June 29, 2018 – that is, twenty-two days after the entry of the R&R. Defendants accordingly argue that Plaintiff has waived objections to the R&R by filing objections after the fourteen-day deadline and that the Court should thus disregard the filing [Doc. 74 at 1].

Pursuant to the R&R, the fourteen-day period in which objections could be timely filed expired on June 21, 2018. However, pursuant to Federal Rule of Civil Procedure 6(d), three days must be added to the fourteen-day time period because Defendant was served the Magistrate Judge's report by mail. *United States v. Hinz*, 126 F. Supp. 3d 921, 925 n.1 (N.D. Ohio) (citing Fed. R. Civ. P. 6(d); *Thompson v. Chandler*, 36 F. App'x 783, 784 (6th Cir. 2002). With the benefit of Rule 6(d), the cutoff for filing objections thus moves to Sunday, June 24, 2018. Rule 6(a)(1)(C) provides that if the last day of the filing period "is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday." This shifts the deadline for timely objections yet another day, to June 25, 2018.

Finally, the Court must consider the application of the prison mailbox rule. The prison mailbox rule provides that the papers of incarcerated pro se inmates be deemed filed when they are delivered to prison authorities for mailing to the Court. *See, e.g.*, *Houston v. Lack*, 487 U.S. 266, 270-71 (1988). Although Plaintiff's filing was not received by the Court until June 29, 2018, a review of the filing indicates that it was signed and notarized on June 25, 2018 [*Id.* at 2-3]. As discussed above, the deadline for Plaintiff to timely file objections to the R&R was June 25, 2018, and the Court

concludes that Plaintiff's objections were timely "filed" on June 25, 2018 – the date that the motion was signed and dated before a notary.

II. PLAINTIFF'S OBJECTIONS

In the R&R, Magistrate Judge Corker summarized the parties' arguments in favor of and opposition to setting aside the defaults that were entered against Defendants Combs, Bernard, Jennings and Linkins, as well as the legal standards applicable to the evaluation of such arguments. [Doc. 68 at 1-3]. The magistrate judge concluded

> Upon a review of the record, it does not appear that any of these Defendants' defaults were willful. These are employees of the Tennessee Department of Corrections at the relevant time in the Complaint, and it is not readily apparent that they were properly served. None of the defendants personally accepted service. Instead, the summons and complaints were all mailed to them at their place of employment and the intake officer, Dawn Barber, signed for them. They did not.

[*Id.* at 3]. The magistrate judge noted that setting aside default was further supported by Defendants' allegations of a meritorious defense to Plaintiff's Complaint, and by the fact that Plaintiff will not prejudiced given the current procedural posture of this action. [*Id.*]. Based on these findings, the magistrate judge recommended that the Defendants' Motions to Set Aside Default be granted, and that Plaintiff's Motion for Default Judgment be denied.

Plaintiff has objected to the recommendations set forth in the R&R. Plaintiff's primary objection is one based on fundamental fairness. Plaintiff states that the Court "is allowing the Defendants to violate the Rules," and posits that the Court would have dismissed his Complaint "if he would have violated any of the Fed. R. Civ. P." Accordingly, Plaintiff maintains that the "Defendants should be held liable" for violating the rules in the same way that the Court would have held Plaintiff liable [Doc. 72]. However, Plaintiff fails to acknowledge that Federal Rule of Civil Procedure 55(c) provides a mechanism by which an entry of default may be set aside. Upon review,

the Court concludes that Magistrate Judge Corker properly set forth the legal standard applicable to consideration of a request to set aside default pursuant to Rule 55(c) and properly applied that standard to the facts of this case. Accordingly, this objection lacks any arguable merit.

The remainder of Plaintiff's objections merely restate arguments set forth in Plaintiff's response in opposition to Defendants' motions. Specifically, Plaintiff repeatedly asserts that Defendants cannot claim that they were unaware of the action, given that Inmate Records Office Supervisor Dawn Barber accepted service on behalf of Defendants' on February 13, 2017, and as such, cannot argue that their failure to respond to Plaintiff's Complaint was not willful [*Compare* Docs. 54 at 1-2, *and* Doc. 63 at 2-3, *with* Doc. 72 at 1-2]. These arguments, however, were fully addressed in Magistrate Judge Corker's R&R, and the Court agrees with the well-reasoned conclusions set forth therein [*See* Doc. 68 at 3].

III. CONCLUSION

For the above reasons, the Court hereby

- **ACCEPTS** and **ADOPTS** the findings of fact and conclusions of law set forth in the R&R;
- **OVERRULES** Plaintiff's objections to the R&R;
- **DENIES** Plaintiff's Motion for Default [Doc. 48];
- **TERMINATES** Plaintiff's Motion to Dismiss the Defendants' Motions to Set Aside Default [Docs. 54, 63]; and
- **GRANTS** the Defendants' Motions to Set Aside Default [Docs. 52, 57].

IT IS SO ORDERED.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE

APPENDIX-E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

JASPER LEE VICK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2:15-CV-116-JRG-MCLC
	)	
C. BERNARD, et al.,	)	
	)	
Defendants.	)	

DEFENDANT N. RIEGEL'S MOTION TO DISMISS

COMES NOW the Defendant N. Riegel (the "Defendant") by and through counsel[1], and pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure, moves this Honorable Court to enter an Order dismissing all claims raised by the Plaintiff. In the alternative, Defendant would request that the summons returned as "executed" be stricken from the Court record. *See* [Doc. 59]. As grounds for this Motion, the Defendant asserts that the Plaintiff has failed to comply with the service of process requirements in the Federal Rules of Civil Procedure Rule 4. Therefore, his claims against Defendant should be dismissed pursuant to the Federal Rules of Civil Procedure Rule 12(b)(5). In further support of this Motion, Defendant states as follows:

1. The Plaintiff filed his Complaint on April 24, 2015, alleging, among other things, civil rights violations pursuant to 42 U.S.C. Section 1983. Specifically, he alleges retaliation for engaging in protected conduct against him on the part of the Defendant.

[1] Counsel has been retained to represent the interests of Ms. Riegel, but has been unable to make contact with or locate her. Her employment at NECX ended in December of 2014 and the contact information previously provided to the Court is the only contact information that we have at this time. Counsel for Ms. Riegel files this motion out of an abundance of caution to prevent a default judgment from being entered against Ms. Riegel.

2. Plaintiff, however, failed to properly serve the Defendant with process under Federal Rules of Procedure Rule 4. Therefore, pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure, Plaintiff's Complaint should be dismissed.

3. Pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure, "a complaint may be dismissed for [']insufficient service of process[']." *Sydney v. Columbia Sussex Corp.*, No. 3:13-CV-312-TAV-CCS, 2014 WL 7156953, at *1 (E.D. Tenn. Dec. 15, 2014) *quoting O.J. Distrib., Inc. v. Hornell Brewing Co.*, 340 F.3d 345, 353 (6th Cir.2003). Further, "[d]ue process requires proper service of process for a court to have jurisdiction to adjudicate the rights of the parties." *Id.* A plaintiff is responsible for serving the summons and complaint in accordance with Federal Rule of Civil Procedure 4 and within the time allowed by Rule 4(m). *Id.* citing Fed.R.Civ.P. 4(c) (1). "[A]ctual knowledge and lack of prejudice cannot take the place of legally sufficient service." *Id. quoting LSJ Inv. Co. v. O.L.D., Inc.*, 167 F.3d 320, 324 (6th Cir.1999).

4. Rule 4(e) of the Federal Rules of Civil Procedure governs the service of process requirements and provides as follows:

> (e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:
> (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
> (2) doing any of the following:
> (A) delivering a copy of the summons and of the complaint to the individual personally;
> (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
> (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

5. In the present case, the Plaintiff attempted to comply with Rule 4(e) by effectuating service by certified mail, a manner allowed by Tennessee state law.

6. Rule 4.04(10) of the *Tennessee Rules of Civil Procedure* states:

> Service by mail of a summons and complaint upon a defendant may be made by the plaintiff, the plaintiff's attorney or by any person authorized by statute. After the complaint is filed, the clerk shall, upon request, furnish the original summons, a certified copy thereof and a copy of the filed complaint to the plaintiff, the plaintiff's attorney or other authorized person for service by mail. Such person shall send, postage prepaid, a certified copy of the summons and a copy of the complaint by registered return receipt or certified return receipt mail to the defendant. If the defendant to be served is an individual or entity covered by subparagraph (2), (3), (4), (5), (6), (7), (8), or (9) of this rule, the return receipt mail shall be addressed to an individual specified in the applicable subparagraph. The original summons shall be used for return of service of process pursuant to Rule 4.03(2). Service by mail shall not be the basis for the entry of a judgment by default unless the record contains a return receipt showing personal acceptance by the defendant or by persons designated by Rule 4.04 or statute. If service by mail is unsuccessful, it may be tried again or other methods authorized by these rules or by statute may be used.

7. Thus, according to Tennessee law, in order for service to be properly effectuated through certified mail, there must be a return receipt showing personal acceptance by the defendant, or someone designated to accept service on their behalf.

8. In this case, a copy of the summons and complaint was mailed to the Defendant's last known address, which was provided by either the Warden of NECX or the Commissioner of the TDOC pursuant to the Court's Order. [Doc. 51 p.5]. The return of service filed with the Court indicates that the package containing the summons and complaint was "left at side door." [Doc. 59 p. 4]. As such, neither the Defendant, nor anyone authorized to accept service on her behalf, signed the return receipt as required by Tennessee Law. Therefore Plaintiff failed to comply with Rule 4(e) of the Federal Rules of Civil Procedure and dismissal is appropriate.

9. Defendant further wishes to preserve, aver, rely upon, plead as an affirmative defense any statute of limitations, statute of repose, failure to state a claim upon which relief can be granted, insufficient process, insufficient service of process, venue, lack of subject matter jurisdiction, and other jurisdiction defenses that the evidence may show to be applicable.

12. Defendant also expressly preserves all available affirmative defenses and bases of dismissal that the evidence may show to be applicable.

13. In the alternative, Defendant requests that the summons returned as "executed" be stricken from the Court record. *See* [Doc. 59].

WHEREFORE, Defendant, N. Riegel, respectfully moves this Court for entry of a Final Order under Rule 54 of the Federal Rules of Civil Procedure, dismissing the Petitioner's Complaint pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure, or in the alternative, that the summons returned as "executed" be stricken from the Court record. .

Respectfully submitted this 21st day of May, 2018.

By: /s/ Jeremey R. Goolsby
Heidi A. Barcus (BPR No. 015981)
Daniel T. Swanson (BPR No. 023051)
Jeremey R. Goolsby (BPR No. 034505)
LONDON & AMBURN, P.C.
607 Market Street, Suite 900
Knoxville, TN 37902
Phone: (865) 637-0203
Fax: (865) 637-4850
hbarcus@londonamburn.com
dswanson@londonamburn.com
JGoolsby@londonamburn.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the

electronic filing receipt. Parties may access this filing through the Court's electronic filing system. I further certify that a copy was mailed by regular U.S. mail, postage prepaid, to the Plaintiff at the address below:

Jasper Vick #139471
SCCF
P.O. Box 279
Clifton, TN 38425-0279

L. Faret
155 Haun Rd.
Erwin, TN 37650

Respectfully submitted this 21st day of May, 2018.

/s/ Jeremey R. Goolsby
Heidi A. Barcus (BPR No. 015981)
Daniel T. Swanson (BPR No. 023051)
Jeremey R. Goolsby (BPR No. 034505)
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Jgoolsby@londonamburn.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

JASPER LEE VICK, Plaintiff, vs. C. BERNARD, et al., Defendants	)	2:15-CV-00116-JRG

ORDER

This matter is before the Court on Plaintiff's Motion to Impose Sanctions [Doc. 170] upon Defendants for their failure to file a Pretrial Narrative Statement on or before November 12, 2019 as ordered by the Court. [Doc. 126]. Plaintiff requests sanctions in the form of a five thousand dollar ($5,000) fine, costs for legal research or secretarial services, and "exclusion of that evidence to be offered at trial." [Doc. 170, p. 2].

Defendants Pardue and Combs filed a Response in Opposition to Motion for Sanctions [Doc. 171], in which they pointed out that the deadlines Plaintiff referenced in his Motion were superseded by the Third Amended Scheduling Order [Doc. 147]. This order required Defendants to file a Pretrial Narrative Statement by February 11, 2020 if Plaintiff first filed a Pretrial Narrative Statement by February 4, 2020. Defendants admit that they were incorrect in filing a notice to the Court on February 10, 2020 stating that Plaintiff had failed to file a Pretrial Narrative Statement as required [Doc.165] since Plaintiff had actually filed a Pretrial Narrative Statement on September 9, 2019 [Doc. 146]. Despite this error, Defendants assert they acted in good faith at all times and did not intentionally disobey the Court's order [Doc. 171, p. 1].

Defendants further argue that the filing of Pretrial Narrative Statements was rendered moot by the entry of an Order dismissing all claims against Defendant Riegal [Doc. 158] on January 7, 2020 and an Order granting summary judgement to all remaining defendants on January 15, 2020 [Doc. 159].[1]

Rule 16 of the Federal Rules of Civil Procedure permits sanctions if a party or its attorney fails to obey a scheduling or other pretrial order of the Court. Fed. R. Civ P. 16(f)(1)(C). The Court enjoys broad discretion in determining when sanctions are appropriate as well as what type of sanctions are warranted. *See Clarksville-Montgomery Cty. Sch. Sys. v. U.S. Gypsum Co.*, 925 F.2d 993, 998 (6th Cir. 1991); *Estes v. King's Daughters Med. Ctr.*, 59 Fed. App'x 749, 753 (6th Cir. 2003).

Here, at worst there may have been a technical failure to follow the Court's scheduling order but not one of the type which would justify the Court imposing sanctions. Although Plaintiff based his motion on the dates in the Second Amended Scheduling Order [Doc. 126], those dates were superseded when the Court issued the Third Amended Scheduling Order [Doc. 147], resulting in Defendants no longer being required to file a Pretrial Narrative Statement by November 12, 2019 and effectively granting a three-month extension. Additionally, Defendants were presumptively granted summary judgement prior to the February 11, 2020 due date for their Pretrial Narrative Statement, rendering the filing of such statement unnecessary. Although the grant of summary judgement was not finalized until the Court denied Plaintiff's motion in

[1] This Order granted the motion for summary judgment filed by all remaining defendants but Pardue and Combs [Doc. 130]. The order noted that Defendants Pardue and Combs also filed a motion for summary judgment [Doc. 127], but the Court did not rule on that motion and instead granted summary judgment based on the lack of evidence to establish causation. Because summary judgment was granted on a ground not raised by Defendants Pardue and Combs, Plaintiff was afforded fourteen days to oppose the grant of summary judgement pursuant to Fed. R. Civ. P. 56(f). Plaintiff filed an objection [Doc. 163], which the Court subsequently denied, and a final order of summary judgement was entered as to Defendants Pardue and Combs on Feb. 12, 2020 [Doc. 166].

opposition on February 12, 2020, one day after the deadline, the Court finds persuasive Defendants argument that they acted in good faith and with no intention to disobey the Court's order. For these reasons, Plaintiff's Motion to Impose Sanctions [Doc. 170] is **DENIED**.

SO ORDERED:

/s Cynthia Richardson Wyrick
United States Magistrate Judge

APPENDIX-F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

JASPER LEE VICK,
Plaintiff,

v. No. 2:15-cv-00116-JRG-MCLC

C. BERNARD, et al.,
Defendants.

PLAINTIFF'S MOTION FOR MISSING WITNESS INSTRUCTION FOR DEFENDANT RIEGEL AND MOTION IN OPPOSITION TO DEFENDANT'S RIEGEL RESPONSE

MAY IT PLEASE THE COURT.

Comes now Plaintiff Jasper Lee Vick, (TDOC #139471), acting pro se, [unlearned in law], and would respectfully submit this pleading, motion, "PLAINTIFF'S MOTION FOR MISSING WITNESS INSTRUCTION FOR DEFENDANT RIEGEL AND MOTION IN OPPOSITION TO DEFENDANT'S RESPONSE" as grounds for this pleading the Plaintiff would submit the following:

On August 26, 2019, Plaintiff submitted his motion, "MOTION IN OPPOSITION TO N. RIEGAL'S MOTION TO DISMISS", pursuant to document No 135 (Defendants motion to dismiss), filed August 1, 2019, and moves this Honorable Court to **not** grant the Defendants Motion, for their dilatory actions are an obvious prevarication of the facts:

1. "In their motion, counsel for Defendant states in note 1 that counsel was retained by Ms. Riegal. Therefore, by virtue of their own admission, they are in contact with Ms. Riegal, or she would not have been able to retain them. Logic and common sense would dictate that the Defendant is attempting to elude prosecution by evading service, yet has retained counsel in her behalf."
2. "In accordance with 39-16-507 (a)(3), Coercion of witness. Since the

> Defendant's counsel is putting forth a motion, clearly they are attempting to coerce the Defendant from appearing in the proceeding due to the nature of the damaging testimony that she will provide, because she was the one present and participated in the actions against the Plaintiff. T.C.A. §39-16-507"

Defendant Riegel's counsel have now filed a "Resopnse In Opposition to Plaintiff Motion", January 27, 2020, asserting that "Defendant's counsel did not state thet were retained by Ms. Riegel. Rather, as explained in Defendant's motion to dismiss, counsel was retained to represent the interest of the Defendant, but has been unable to make contact or locate her. Doc. No. 135."

Pursuant to Fed. R. Civ. P. 4(e)(2)(c), Defendant Riegel and retained counsel have been properly served and can not say otherwise based on her "Notice of Appearance" and many motions to this Court for inapporiate dismissal(s) "delivering a copy of each to an agent authorized by appoinment or by law receice service of process." [Fed. R. Civ. P.].

If a party has it peculiarly within his power to produce witnesses whose testimony would elucidate the transaction, the fact that he does not do it creates the presumption that the testimony, if produced, would be unfavorable. When a witness is peculiarly within the control of one party, and that witness' testimony would elucidate facts in issue, an instruction is appropriate regarding the permissible inference which the jury may draw from the party's failure to call the witness. However, to receive a missing witness instruction, the requesting party must demonstrate: the potential witness' unavailability in a physical or practical sense; and that the potential testimony would be relevant and noncumulative. An inference from a party's failure to call a witness equally available to both parties is impermissible. A party who may or may not invoke the Fifth Amendment is equally available to either party.

1). Defendant Riegel has retain counsel authorized by appoinment or by law have received service of process; and 2). Defendant's testimony is relevant to this cause of action.

In the case of **Robinson v. Winn** this Court held: (In Ppart):

> "The trial court abused its discretion in ruling the prosecution had shown due diligence admitting [to] produce Frank Coleman and by denying Robinson a missing witness instruction, thus denying Mr. Robinson his state and federal constitutional right to confrontation." Robinson v. Winn, 2019 LEXIS 94708 (June 2019).

Accordingly the Defendants has effectively denied Plaintiff his state and federal constitutional right to confrontation, thus Plaintiff respectfully request the court for "missing witness instruction as to Defendant Riegel. Plaintiff asserts that Defendant Riegel, under oath will testify with relevant information as to her involvement in her joining the scheme of retaliation against the Plaintiff.

In the case of Berry v. Mays, this Court held: (In part):

> "The Tennessee Court of Criminal Appeals also found that, although Petitioner contended that he could have used Murphy's statement to cross examine witnesses at trial, called Murphy as a witness, argued the inconsistencies between Murphy's and Cartwright's accounts during closing argument,{2019 U.S. Dist. LEXIS 53} or asked for a missing witness instruction regarding the failure of the State to call Murphy, Cartwright's testimony was not the only incriminating evidence against Petitioner with regard to premeditation." **Berry v. Mays**, U.S. 2019 U.S. Dist. LEXIS 107966 (6th Cir 2019)

To further the mindset of #1 above, the defendant's Counsel is in admission of the fact that they are acting as "Agent" for their client. Therefore, since they had a contractual obligation as well as ethical and fiduciary relations with their client, the defendant has been served. There is a long standing maxim in law that states: "NOTICE TO AGENT IS NOTICER TO PRINCIPAL, NOTICE TO PRINCIPAL IS NOTICE TO AGENT."

It is the duty of the agent to locate their client after the agent receives "NOTICE."

August 26, 2019, Plaintiff timely submitted his response "IN OPPOSITION TO DEFENDANT N. RIEGAL'S MOTION TO DISMISS."

Plaintiff timely submit this motion, "Plaintiff's Motion for Missing Witness Instruction for Defendant Riegel and Motion In Opposition to Defendant's Riegel's Response", and

MOVE the Court to schedule this case for trial with "Missing witness Instruction" as to Defendant Riegel.

Furthermore, Plaintiff timely submitted his motion, "Motion for Summary Judgment" on September 12, 2019, against these Defendants, et al, and hereby MOVE the Court to schedule this case for trial and preserve the ORDER Document 158 for appellate purposes with "missing witness instruction.

Respectfully submitted, this ~~January 13~~ February 03 2020.

Respectfully submitted,

Jasper L. Vick

Jasper Lee Vick, #139471
2520 Union Springs Road
Whiteville, TN 38075
X.c.: Fl. #20-006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to:

London & Amburn, PC
607 Market Street, Suite 900
Knoxville, TN 37902

STATE OF TENNESSEE
Pamela Lorch
PO Box 20207
Nashville, TN 37201

via prepaid first class U.S. Postage this ~~January 13~~ February 03, 2020.

Jasper Vick

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

JASPER LEE VICK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:15–CV–116
	)	
C. BERNARD, et al.,	)	
	)	
Defendants.	)	

ORDER

These matters are before the Court on Plaintiff Vick's Motion to Reconsider Docket Entry 158, [Doc. 161], Motion to Reconsider Document Number 159, [Doc. 163], and Motion for Missing Witness Instruction for Defendant Riegal and Motion in Opposition to Defendant Riegal's Response, [Doc. 164]. Plaintiff's Motions involve seven Defendants. Four are employees of Centurion of Tennessee, LLC—Dr. Clement F. Bernard, Nurse Practitioner Beth Jennings Morley, Nurse Natalie Linkins, and Nurse Stephanie Carmody ("Centurion Defendants"). Two are individuals represented by the State of Tennessee—Defendants Angel Combs and Leslie Faret aka Pardue ("State Defendants"). Last is N. Riegal, a Defendant never served by Plaintiff. The claims against the Centurion Defendants and N. Riegal have been dismissed. Plaintiff requests that the Orders dismissing those Defendants be reconsidered.

The Court has stated the grounds on which it will grant the State Defendants summary judgment under Federal Rule of Civil Procedure 56(f). [Doc. 159]. Plaintiff opposes the granting of summary judgment. After reviewing Plaintiff's opposition and for the reasons set forth in the Court's prior Order, the Court GRANTS summary judgment for the State Defendants, Angel

Combs and Leslie Faret aka Pardue, and Plaintiff's claims against them will be DISMISSED with prejudice.

I. Plaintiff's Motion to Reconsider Docket Entry 158 is DENIED because he relied on his previous arguments and did not show that a clear error or manifest injustice needed correction.

Under Sixth Circuit jurisprudence, a district court has the authority to reconsider a previously filed order under Rule 54(b) of the Federal Rules of Civil Procedure and common law. *Rodriguez v. Tennessee Laborers Health & Welfare Fund*, 89 F. App'x 949, 959 (6th Cir. 2004). The reconsideration of an order is appropriate "when there is (1) an intervening change of controlling law; (2) new evidence available; or (3) a need to correct a clear error or prevent manifest injustice." *Id.* A motion to reconsider does not give a party the opportunity to make the same arguments already ruled on. *Helton v. ACS Grp.*, 964 F. Supp. 1175, 1182 (E.D. Tenn. 1997).

Plaintiff's first motion requests the Court to reconsider Defendant Riegal's dismissal. In the motion, he makes the same arguments that he made in his response to the Motion to Dismiss filed on behalf of Defendant Riegal. [Doc. 161–1, 1398]. He argues that attorneys hired to represent Defendant Riegal's interests must be in contact with her. [*Id.*]. Plaintiff gives no evidence supporting his claim that they have been in contact with her. [*Id.*]. Defense Counsel has repeatedly stated that they have not been able to contact Riegal. [Doc. 162]. Plaintiff again accuses Defendant's counsel of attempting to coerce Riegal to prevent her from testifying in violation of Tennessee Code Annotated § 39–16–507. [Doc. 161–1, PageID 1398–99]. Plaintiff provides no evidence that counsel has ever contacted Riegal, let alone attempted to coerce her. [*Id.*]. Plaintiff also argues that Defendant Riegal has notice of the lawsuit through counsel, which he claims are her agent-attorneys. [Doc 161, PageID 1396]. These are not grounds for reconsideration of the Court's previous order.

Plaintiff Vick does not argue that controlling law changed or that new evidence is available. Therefore, the only grounds available to reconsider the Court's previous Orders are "a need to correct a clear error or prevent manifest injustice." Plaintiff fails to show that a clear error or manifest injustice exists. Defense counsel assert that it has never been able to contact Riegal. Further, Plaintiff has failed to serve Defendant Riegal. Actual knowledge does not meet the requirement for service of process. *Taylor v. Stanley Works*, No. 4:01–CV–120, 2002 WL 32058966, at *3 (E.D. Tenn. July 16, 2002). Therefore, even if Defense Counsel has been in contact with Riegal, her actual knowledge of the lawsuit would not overcome the lack of service of process. Therefore, there is no "need to correct a clear error or prevent manifest injustice," and the motion is DENIED.

II. Plaintiff's Motion to Reconsider Document Number 159, including its opposition of summary judgment for the State Defendants is DENIED.

In his second motion, Plaintiff asks the Court to reconsider its grant of summary judgment to the Centurion Defendants and opposes the granting of summary judgment for the State Defendants. Plaintiff appears to rely on the same, previously made, arguments for reconsideration and in opposition. Again, Plaintiff relies arguments already presented to the Court, and he points to areas of the record that he believes the Court has overlooked.

Plaintiff states that in a response to Plaintiff's grievance, Health Administrator Georgia Crowell stated that Plaintiff was a chronic patient that was seen by a physician every three months. [Doc. 163, PageID 1410–11]. Plaintiff's most recent appointment was on July 14, 2014. [*Id.*]. But Plaintiff's next appointment was on August 18, 2014, which was far less than three months away. [*Id.*]. Plaintiff insinuates that the accelerated appointment schedule proves causation for retaliation. [*Id.*].

The Court disagrees with Plaintiff. It is undisputed that medicine prescribed to Plaintiff was not controlling his blood sugar in August of 2014. [Doc. 159, PageID 1356]. The inability to control his blood sugar, according to his physicians, prompted his stay in the infirmary. [*Id.* at PageID 1357]. The inability to control his blood sugar also explains why he was seen by a physician before his three-month chronic patient checkup. In fact, it could be argued that waiting until his checkup to treat the out-of-control blood sugar would be improper.

Plaintiff also argues that the record contains false reports and Defendants are using the false reports to cover up their retaliatory actions. [Doc. 163, PageID 1411–12]. According to the Plaintiff, while Plaintiff's medical records indicate he consented to his admittance to the infirmary, he denies he ever consented. [*Id.*]. Even accepting Plaintiff's allegations as true, a dispute about the accuracy of the records is not a ground for reconsideration and denial of Defendants' motion for summary judgment. The undisputed account of Plaintiff's medical condition shows that Plaintiff's blood sugar was not responding appropriately to medication, and his stay in the infirmary was for medical purposes. [Doc. 159, PageID 1356–57].

Neither of Plaintiff's arguments for reconsideration of Document 159 meets the Sixth Circuit standard of showing a change of law, new available evidence, or "a need to correct a clear error or prevent manifest injustice." *Rodriguez*, 89 F. App'x at 959. Therefore, Plaintiff's Motion for Reconsideration of Document 159 is DENIED.

Plaintiff also opposes the granting of summary judgment for the State Defendants, but he does not give specific grounds for the opposition. The Court assumes Plaintiff intended to apply his arguments for reconsideration to his opposition as well. These grounds are not sufficient to deny the State Defendants summary judgment. Even when giving special attention to the facts focused on by Plaintiff, he still fails to produce evidence to establish causation, the third element

of a retaliation claim in the Sixth Circuit. *Brown v. Crowley*, 312 F.3d 782, 787 (6th Cir. 2002). Therefore, the State Defendants are GRANTED summary judgment.

III. Plaintiff's motion for missing witness instruction for Defendant Riegal is DENIED.

Plaintiff's last motion is a Motion for Missing Witness Instruction for Defendant Riegal and Opposition to Defendant Riegal's Response. Plaintiff cites Federal Rule of Civil Procedure 4(e)(2)(C) as grounds for service of process for Defendant Riegal. This Rule permits the service of an authorized agent for service of process. [Doc. 1417]. However, as discussed above, Plaintiff has not established that counsel for the Centurion Defendants is an agent for Defendant Riegal. Defense counsel has consistently and repeatedly stated that they have been unable to contact Riegal, and Plaintiff has never shown that he has served Riegal.

Plaintiff also requests a missing witness instruction to a jury stating that Defendant Riegal has been hidden by Defendants and that a jury could presume that any testimony that Riegal would have given would be unfavorable to Defendants. [Doc. 164, PageID 1417–18]. Plaintiff states that hiding Riegal denies the right to confront a witness, and an adverse instruction to the jury could remedy the violation. [*Id.* at PageID 1418]. However, the Confrontation Clause and the right to confront witnesses only apply in criminal prosecutions, not civil proceedings. *Crawford v. Washington*, 541 U.S. 36, 38 (2004). For this reason, Plaintiff's right to confrontation has not been violated, and he is not entitled to an adverse witness instruction.

In the closing paragraph of his motion, Plaintiff requests that the Court grant his motion for summary judgment filed on September 12, 2019. [Doc. 164, PageID 1419]. He states that his motion was timely; however, it was not. Dipositive motions were due on August 1, 2019. [Doc. 126]. The Court granted him an extension to respond to motions for summary judgment filed by Defendants until September 24, 2019 but did not grant him an extension to file his own motion for

summary judgment. [Doc. 1126]. Regardless, the Court construed Plaintiff's "motion for summary judgment" as a timely response. [Doc. 156]. Plaintiff was not hindered by this characterization as the "motion" was drafted like a response to Defendants' motions for summary judgment.

IV. Conclusion

For the above stated reasons, Plaintiff Vick's Motion to Reconsider Docket Entry 158, [Doc. 161], Motion to Reconsider Document Number 159, [Doc. 163], and Plaintiff's Motion for Missing Witness Instruction for Defendant Riegal and Motion in Opposition to Defendant Riegal's Response, [Doc. 164] are DENIED. Summary judgment for Defendants Angel Combs and Leslie Faret aka Pardue is GRANTED because of Plaintiff's lack of evidence to prove causation. Because of the granting of summary judgment under Federal Rule of Civil Procedure 56(f), the Motion for Summary Judgment filed by Defendants Combs and Pardue is DENIED AS MOOT. [Doc. 127].

So ordered.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

JASPER LEE VICK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:15–CV–116
	)	
C. BERNARD, et al.,	)	
	)	
Defendants.	)	

JUDGMENT

This action came before the Honorable J. Ronnie Greer, District Judge, presiding, and the issues having been duly addressed and a decision having been duly rendered,

It is ORDERED and ADJUDGED that Plaintiff recover nothing of Defendants Clement Bernard, Beth Jennings, Angel Combs, Leslie Faret aka Leslie Pardue, Stephanie Carmady, Natalie Linkins, and that the action of Plaintiff against these Defendants be DISMISSED on the merits, that is, with full prejudice,

Further, it is ORDERED and ADJUDGED that Plaintiff recover nothing of Defendant N. Riegal, and that the action of Plaintiff against that Defendant to be DISMISSED without prejudice.

ENTERED AS A JUDGMENT:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE

s/ *John L. Medearis*
District Court Clerk

No. 20-5259

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JASPER LEE VICK,

Plaintiff-Appellant,

v.

R. SMITH, et al., in their Individual and Official Capacities,

Defendants,

and

CLEMENT F. BERNARD, et al., in their Individual and Official Capacities,

Defendants-Appellees.

ORDER

Before: ROGERS, NALBANDIAN, and MURPHY, Circuit Judges.

Jasper Lee Vick, a pro se Tennessee prisoner, moves the court to reconsider its order of June 25, 2020, denying his motion to proceed in forma pauperis on appeal.

Vick has not shown that the court overlooked or misapprehended a point of law or fact in denying him leave to proceed in forma pauperis. *See* Fed. R. App. P. 40(a)(2).

Accordingly, we **DENY** his motion for reconsideration.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk