

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-1660

GWENDOLYN SINGLETON,

Plaintiff - Appellant,

v.

ORANGEBURG COUNTY DISABILITIES SPECIAL NEEDS BOARD,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Terry L. Wooten, Senior District Judge. (5:19-cv-00347-TLW)

Submitted: September 22, 2020

Decided: September 24, 2020

Before NIEMEYER, KEENAN, and FLOYD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Gwendolyn Singleton, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gwendolyn Singleton appeals the district court's order adopting the magistrate judge's recommendation to dismiss, without prejudice, Singleton's employment discrimination action.* The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B). The magistrate judge recommended that Singleton's action be dismissed and advised Singleton that failure to file timely and specific objections to the recommendation would waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *See Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140 (1985). Singleton waived appellate review of the district court's disposition by failing to file objections specifically challenging the magistrate judge's recommendation. Singleton also fails to challenge the district court's disposition in her informal brief, which further supports the conclusion that she has waived appellate review of the appealed-from order. *See* 4th Cir. R. 34(b).

* Although the district court dismissed the action without prejudice, we have jurisdiction over this appeal. *See Bing v. Brivo Sys., LLC*, 959 F.3d 605, 615 (4th Cir. 2020).

Based on the foregoing, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Gwendolyn Singleton,

Case No. 5:19-cv-347-TLW

PLAINTIFF,

v.

Orangeburg County Disabilities Special
Needs Board,

DEFENDANT.

Order

Plaintiff Gwendolyn Singleton, proceeding *pro se*, brings this employment discrimination action. ECF No. 14. The matter now comes before the Court for review of the Report and Recommendation (Report) filed by the magistrate judge to whom this case was assigned. ECF No. 23.

The magistrate judge previously ordered that the Plaintiff bring this case into proper form for the issuance and service of process and warned the Plaintiff that failure to comply would subject this case to dismissal for failure to prosecute. *See* ECF No. 11. The Plaintiff responded by summonses and Forms USM-285 that did not comply with the court's order. *See* ECF No. 15. The magistrate judge then once again ordered that the Plaintiff bring this case into proper form for the issuance and service of process. *See* ECF No. 18. The Plaintiff did not respond to this order. The magistrate judge has now issued the instant Report.

In the Report, the magistrate judge recommends that this case be dismissed for failure to prosecute under Rule 41 of the Federal Rules of Civil Procedure. After the magistrate judge filed the Report, Plaintiff filed objections. ECF No. 28. The objections state no facts related to her claim. The objections do not specifically address the issues raised in the Report

related to dismissal for failure to prosecute or comply with the court order. The plaintiff did attach a notice from the EEOC stating it was closing its file because “[b]ased upon its investigation, the EEOC is unable to conclude that information obtained establishes violation of the statutes.” ECF No. 28-1 at 1. This matter is now ripe for decision.

In reviewing the Report, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Hous. Auth. of City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in *Wallace*, the Court has reviewed, *de novo*, the Report and the objections. After careful review of the Report and the objections, for the reasons stated by the magistrate judge, the Report, ECF No. 23, is **ACCEPTED**. Plaintiff's objections, ECF No. 28, are **OVERRULED**. Plaintiff's Amended Complaint, ECF No. 14, is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

s/ Terry L. Wooten

Terry L. Wooten

Senior United States District Judge

May 18, 2020
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Gwendolyn Singleton,

Case No. 5:19-cv-347-TLW

PLAINTIFF,

v.

Orangeburg County Disabilities Special
Needs Board,

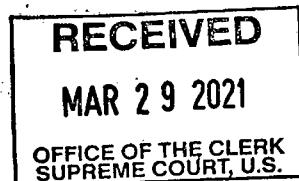
Order

DEFENDANT.

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In the Report, the magistrate judge recommends that this case be dismissed for failure to prosecute under Rule 41 of the Federal Rules of Civil Procedure. After the magistrate judge filed the Report, Plaintiff filed objections. ECF No. 28. The objections state no facts related to her claim. The objections do not specifically address the issues raised in the Report.



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Gwendolyn Singleton,) C/A No. 5:19-347-TLW-PJG
)
 Plaintiff,)
)
 v.)
)
)
 Orangeburg County Disabilities Special Needs)
 Board,)
)
)
 Defendant.)
)
 _____)
)

**ORDER AND
REPORT AND RECOMMENDATION**

Plaintiff, Gwendolyn Singleton, a self-represented litigant, brings this employment discrimination action pursuant to 28 U.S.C. § 1915. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.).

By order dated March 4, 2019, the court provided Plaintiff with the opportunity to bring this case into proper form for the issuance and service of process. (ECF No. 11.) The order warned Plaintiff that her failure to comply within the time permitted would subject this case to dismissal for failure to prosecute and for failure to comply with an order of the court under Rule 41 of the Federal Rules of Civil Procedure. Plaintiff responded by filed filing summonses and Forms USM-285 that did not comply with the court's order. (ECF No. 15.)

Consequently, the court issued a second order on April 2, 2019, providing Plaintiff the opportunity to correct the deficiencies in the service documents. (ECF No. 18.) Plaintiff was again warned that her failure to comply within the time permitted would subject this case to dismissal for failure to prosecute and for failure to comply with an order of the court under Rule 41 of the Federal Rules of Civil Procedure. However, the time to respond to the order has since lapsed and Plaintiff has not responded to the April 2 order.

As indicated above, Plaintiff has failed to fully comply with two orders issued by this court and has failed to provide the necessary information and paperwork to accomplish review and possible service of process under 28 U.S.C. § 1915. “The authority of a court to dismiss *sua sponte* for lack of prosecution has generally been considered an ‘inherent power,’ governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” Link v. Wabash R.R. Co., 370 U.S. 626, 630-31 (1962); see also Ballard v. Carlson, 882 F.2d 93, 95 (4th Cir. 1989) (“The Federal Rules of Civil Procedure recognize that courts must have the authority to control litigation before them, and this authority includes the power to order dismissal of an action for failure to comply with court orders.”). As well as inherent authority, a court may *sua sponte* dismiss a case for lack of prosecution and failure to comply with a court order under Federal Rule of Civil Procedure 41(b). Id. at 630. In deciding whether dismissal is appropriate for a Plaintiff’s lack of prosecution or failure to comply with a court order, the United States Court of Appeals for the Fourth Circuit has held that a court should “ascertain (1) the degree of personal responsibility of the plaintiff, (2) the amount of prejudice caused the defendant, (3) the existence of a drawn out history of deliberately proceeding in a dilatory fashion, and (4) the existence of a sanction less drastic than dismissal.” Chandler Leasing Corp. v. Lopez, 669 F.2d 919, 920 (4th Cir. 1982) (internal quotation marks and citation omitted).

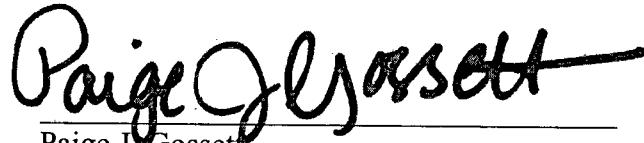
In the instant action, Plaintiff is proceeding *pro se*; therefore, she is solely responsible for her refusal to comply with the court’s orders.¹ Further, because Plaintiff has failed to even respond

¹ See Craft v. Astrue, No.1:10CV9, 2012 WL 6569021, at *2 (M.D.N.C. Dec. 17, 2012) (finding, pursuant to the standard set forth in Chandler Leasing, “Plaintiff has proceeded *pro se* from the outset, thus she has demonstrated that she is capable of filing pleadings and papers and she alone bears the responsibility for her failure to prosecute her case.”).

to the court's April 2 order, it does not appear that any sanction less drastic than dismissal is available. See Ballard, 882 F.2d at 96 (finding the Magistrate Judge's explicit warning that a recommendation of dismissal would result from the plaintiff's failure to obey his order gave the district court little alternative to dismissal because any other course would have placed the credibility of the court in doubt and invited abuse). Therefore, this case should be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Because the case is recommended for summary dismissal prior to service of process, it is also recommended that the case be dismissed without prejudice.

III. Conclusion

Based on the foregoing, the court recommends this matter be dismissed for Plaintiff's failure to prosecute and failure to comply with an order of the court pursuant to Federal Rule of Civil Procedure 41(b).²



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

May 10, 2019
Columbia, South Carolina

*The parties are directed to note the important information in the attached
"Notice of Right to File Objections to Report and Recommendation."*

² Consequently, Plaintiff's motion regarding discovery is terminated as moot. (ECF No. 8.)

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).