

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10334



XAVIER CRITTENDON,

Plaintiff - Appellant

A True Copy

Certified order issued Aug 16, 2017

Styl W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

v.

STATE OF TEXAS, DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; ROSA K. PHIFER, Staff Attorney, Department of Family and Protective Services; JONATHAN MILES, Open Records Attorney, Department of Family and Protective Services; CONNIE PRESLEY, Program Administrator, Department of Family and Protective Services; KERRI FOWLER, Director, Department of Family and Protective Services; ERICA VAN, Austin Background Check Unit, Department of Family and Protective Services; SONIA MARTINEZ, Administrative Assistant, Department of Family and Protective Services; KRISTIANNA ARANDA, Administrative Assistant, Department of Family and Protective Services; KIM DAVIS, Staff Supervisor, Department of Family and Protective Services; LECRECIA WELLS, Inspector, Department of Family and Protective Services; ANDREA RICKARD, Program Improvement Specialist, Department of Family and Protective Services; ALEXANDER GARCIA, Supervisor, Department of Family and Protective Services; RAMONA EVANS, Inspector, Department of Family and Protective Services; AMANDA HERRINGTON, Background Check Unit, Department of Family and Protective Services; NEVA WARD, Background Check Unit, Department of Family and Protective Services; ERIN RAGSDALE, Program Improvement Specialist, Department of Family and Protective Services; WALTER RIDEAUX, Inspector, Department of Family and Protective Services; ROSEZELLA LEWIS, Supervisor, Department of Family and Protective Services; ASIA (UNKNOWN) AUSTIN CORPORATE; LASHONDA RENA GREEN,

Defendants - Appellees

Appeal from the United States District Court for the
Northern District of Texas, Dallas
USDC No. 3:16-CV-2229

Before REAVLEY, SOUTHWICK, and COSTA, Circuit Judges.

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment. In this civil rights case, the district court entered final judgment dismissing the complaint on December 5, 2016. Therefore, the final day for filing a timely notice of appeal was January 4, 2017. The plaintiff's notice of appeal was filed on March 22, 2017. The time limitation for filing a notice of appeal in a civil case is jurisdictional. *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *Robbins v. Maggio*, 750 F.2d 405, 408 (5th Cir. 1985). All pending motions are denied as moot.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

XAVIER CRITTENDON,

Plaintiff,

VS.

STATE OF TEXAS DEPARTMENT OF
FAMILY AND PROTECTIVE
SERVICES, ET AL.,

Defendants.

CIVIL ACTION NO.

3:16-CV-2229-G (BK)

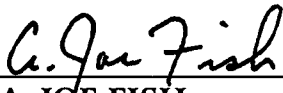
**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions and a recommendation in this case. Plaintiff filed objections, and the district court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The objections are overruled, and the court **ACCEPTS** the findings, conclusions and recommendation of the United States Magistrate Judge.

It is therefore **ORDERED** that this action is **DISMISSED** without prejudice for want of prosecution. *See* FED. R. CIV. P. 41(b).

The court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). In support of this certification, the court adopts and incorporates by reference the magistrate judge's findings, conclusions and recommendation. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the findings and recommendation, the court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).^{*} In the event of an appeal, plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; FED. R. APP. P. 24(a)(5).

December 5, 2016.



A. JOE FISH
Senior United States District Judge

^{*} Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

XAVIER CRITTENDON,
Plaintiff,

v.

**STATE OF TEXAS DEPARTMENT OF
FAMILY AND PROTECTIVE SERVICES,
et al.,**
Defendants.

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CIVIL NO. 3:16-CV-2229-G-BK

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b) and *Special Order 3*, this case was referred to the United States magistrate judge. For the reasons that follow, this action should be **DISMISSED WITHOUT PREJUDICE** for want of prosecution.

I. BACKGROUND

On September 23, 2016, the Court issued a deficiency order, which required Plaintiff to resubmit his motion to proceed *in forma pauperis* on the AO239 form. Doc. 11. The deadline for Plaintiff's response was October 14, 2016. As of the date of this recommendation, however, Plaintiff has not responded to the Court's order, nor has he sought an extension of time to do so.

II. ANALYSIS

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

Plaintiff has been given ample opportunity to respond to the Court's order. He has impliedly refused or declined to do so. Therefore, this action should be dismissed without prejudice for lack of prosecution. *See* FED. R. CIV. P. 41(b) (an involuntary dismissal "operates as an adjudication on the merits," unless otherwise specified). Plaintiff was duly warned of this consequence if he failed to comply with the Court's order. Doc. 11.

III. RECOMMENDATION

For the foregoing reasons, it is recommended that this action be **DISMISSED WITHOUT PREJUDICE** for want of prosecution.

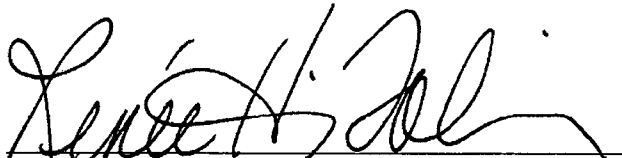
SIGNED November 7, 2016.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

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Clerk's Office.**