



April Parker v. Weber and Olcese

2011 | Cited 0 times | E.D. Michigan | May 26, 2011

ORDER ACCEPTING AND ADOPTING MAY 10, 2011 R&R AND DISMISSING PLAINTIFF'S COMPLAINT FOR FAILURE TO PROSECUTE

Acting through counsel, Plaintiff April Parker filed this action against Defendants on December 7, 2009.

On September 1, 2010, the parties stipulated that Plaintiff would be deposed on September 13, 2010 (D.E. No. 17) and this Court entered an agreed upon order that she would be deposed on that date. (D.E. No. 18).

After Plaintiff failed to appear for deposition as agreed, on September 17, 2010, Defendants Weber & Olcese, Michael Olcese and Jeffrey Weber filed a "Motion to Dismiss as Sanction for Plaintiff Failing to Comply with Discovery Order." (D.E. No. 19).

This Court referred the motion to Magistrate Judge Mona K. Majzoub for issuance of a Report and Recommendation ("R&R"). Thereafter, on April 29, 2011, Magistrate Judge Majzoub issued an Order directing Plaintiff to show cause, in writing, no later than May 6, 2011, "why her claims against all Defendants should not be dismissed for failure to prosecute pursuant to Rule 41(b) or for failure to provide or permit discovery under Rule 37." (D.E. No. 26). That Order expressly warned Plaintiff that "[f]ailure to show good cause under this order may result in dismissal of Plaintiff's complaint in its entirety." (Id. at 2) (emphasis in original).

Thereafter, on May 9, 2011, Plaintiff's Counsel filed a response to the order stating that "Plaintiff's counsel has previously informed the Court that Plaintiff has failed/refused to contact him after numerous attempts and request by Plaintiff's counsel to do so. At present, Plaintiff's counsel's position remains the same: this Court should take whatever [action it] deems necessary regarding motion to dismiss." (D.E. No. 27).

On May 10, 2011, Magistrate Judge Majzoub issued her R&R, wherein she recommends that the Court: 1) dismiss Plaintiff's complaint in its entirety, pursuant to FED. R.CIV. P. 41(b); and 2) deny Defendant's Motion to Dismiss. (D.E. No. 28). That R&R advised the parties that any objections to the R&R had to be filed within 14 days of service of the R&R. (Id. at 5).

No party has filed objections to the R&R and the time for doing so has passed. Accordingly, IT IS ORDERED that the May 10, 2011 R&R is ADOPTED. The Court hereby ORDERS that: 1) Plaintiff's



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complaint is hereby DISMISSED, in its entirety, pursuant to FED.R. CIV. P.41(b); and 2) Defendants' Motion to Dismiss is DENIED. IT IS SO ORDERED.

Sean F. Cox United States District Judge

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 26, 2011, by electronic and/or ordinary mail.

Jennifer Hernandez Case Manager

