

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 21-12260-J

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JERMAINE E. SPENCE,

Plaintiff-Appellant,

versus

STATE OF GEORGIA-CITY OF HAPEVILLE-MUNICIPAL COURT-COURT SERVICES,  
STATE OF GEORGIA- FULTON COUNTY- OFFICE OF THE DISTRICT ATTORNEY,  
STATE OF GEORGIA- DEPARTMENT OF BEHAVIORAL HEALTH AND  
DEVELOPMENTAL DISABILITIES (WEST CENTRAL GA REG. HOSPITAL),

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Georgia

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Before: JORDAN, NEWSOM, and LAGOA, Circuit Judges,

BY THE COURT:

Jermaine Spence's September 8, 2021 motion for reconsideration of our September 7 order dismissing this appeal for lack of jurisdiction is DENIED.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 21-12260-J

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JERMAINE E. SPENCE,

Plaintiff-Appellant,

versus

STATE OF GEORGIA-CITY OF HAPEVILLE-MUNICIPAL COURT-COURT SERVICES,  
STATE OF GEORGIA- FULTON COUNTY- OFFICE OF THE DISTRICT ATTORNEY,  
STATE OF GEORGIA- DEPARTMENT OF BEHAVIORAL HEALTH AND  
DEVELOPMENTAL DISABILITIES (WEST CENTRAL GA REG. HOSPITAL),

Defendants-Appellees.

---

Appeal from the United States District Court  
for the Northern District of Georgia

---

Before: JORDAN, NEWSOM, and LAGOA, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. Jermaine Spence's June 28, 2021 notice of appeal is untimely to appeal from the district court's May 7, 2020 final order and judgment. See 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A) (stating that a party has 30 days from the judgment or order appealed from to file a notice of appeal); *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 21 (2017) (explaining that the timely filing of a notice of appeal is jurisdictional); *Green v. Drug Enf't Admin.*, 606 F.3d 1296, 1300-02 (11th Cir. 2010); *Haney v. Mizell Mem'l Hosp.*, 744 F.2d 1467, 1472 (11th Cir. 1984) (explaining that a notice of appeal is ordinarily deemed filed on the day when the district court receives it). Moreover, a late notice of

appeal, in and of itself, cannot be construed as a Rule 4(a)(5) motion in a civil case, and Spence has not moved for an extension of the time to appeal under this rule. *See* Fed. R. App. P. 4(a)(5); *Parker v. Strickland*, 728 F.2d 1406, 1407 (11th Cir. 1984). Therefore, we lack jurisdiction over this appeal and must dismiss the appeal.

No motion for reconsideration may be filed unless it complies with the timing and other requirements of Eleventh Circuit Rule 27-2 and all other applicable rules.

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

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September 07, 2021

Jermaine E. Spence  
PO BOX 829  
ATLANTA, GA 30301

Appeal Number: 21-12260-J  
Case Style: Jermaine Spence v. State of Georgia-City of Hapeville-Municipal Court, et al  
District Court Docket No: 1:19-cv-05722-SCJ

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Davina C Burney-Smith, J  
Phone #: (404) 335-6183

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JERMAINE E. SPENCE,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:19-CV-5722-SCJ
	:	
STATE OF GEORGIA, et al.,	:	
Defendants.	:	

**ORDER**

Presently before the Court is Magistrate Judge J. Clay Fuller’s Final Report and Recommendation (R&R) recommending that the instant action be dismissed with prejudice for Plaintiff’s willful and contemptuous failure to comply with a lawful order of the Court. [Doc. 52]. Plaintiff has filed his objections in response to the R&R. [Doc. 54].

A district judge has broad discretion to accept, reject, or modify a magistrate judge’s proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 680 (1980). Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the Report and Recommendation that is the subject of a proper objection on a *de novo* basis and any non-objected portion under a “clearly erroneous” standard. “Parties filing objections to a magistrate’s report and recommendation must specifically identify those findings objected to. Frivolous, conclusive or general objections need

not be considered by the district court.” Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988).

Plaintiff Jermaine E. Spence, a former Georgia civil detainee, filed a pro se 42 U.S.C. § 1983 civil rights complaint in this Court. He then filed various motions to amend and/or supplement the complaint along with letters that raised additional factual allegations. On July 2, 2020, the Magistrate Judge granted Plaintiff’s motions to amend, but ordered Plaintiff to file, within thirty days, a single superseding, amended complaint containing all of the claims that he sought to raise. [Doc. 19]. The Magistrate Judge reasoned that Plaintiff could not be permitted to raise his claims in piecemeal fashion across at least six documents comprising over one hundred pages as it would be unduly burdensome for any named defendant, as well as this Court, to determine exactly what claims Plaintiff intended to raise.

Instead of complying with the Magistrate Judge’s order, Plaintiff filed a document that he styled as a “partial no contest reply,” [Doc. 27], in which he bluntly stated that he would not amend his complaint because, in his opinion, the complaint as it stood was acceptable. On January 19, 2021, the Magistrate Judge issued an order directing Plaintiff to show cause why this matter should not be dismissed for Plaintiff’s willful failure to comply with a lawful order of the Court. [Doc. 34]. In response, Plaintiff contended that the Magistrate Judge lacked authority to dismiss the

action, that his suit is meritorious and ripe for review, and that his amendments were in compliance with Fed. R. Civ. P. 15. [Docs. 45, 47].

In the R&R, the Magistrate Judge notes that, pursuant to Fed. R. Civ. P. 41(b), this Court is authorized to dismiss a complaint *sua sponte* for failure to obey a court order. As the Magistrate Judge twice warned Plaintiff that his failure to comply with the order to amend could result in dismissal of this action the Magistrate Judge determined that dismissal was appropriate. The Magistrate Judge further concluded that, because of Plaintiff's willful contempt in flatly refusing to amend his complaint, this Court should impose the extreme sanction of dismissing this action with prejudice. See Brent v. Hyundai Motors Am., 679 F. App'x 976, 977-78 (11th Cir. 2017) (holding that plaintiff's disobedience of the district court's order to amend his complaint warranted dismissal with prejudice under Rule 41(b)).

If this Court was not at first entirely convinced that dismissal with prejudice was appropriate, Plaintiff's objections have sealed the deal. In those objections, Plaintiff complains that the Magistrate Judge did not perform a frivolity determination as required by 28 U.S.C. § 636(b)(1), and he contends that his collection of complaints are not "in disarray, woefully frivolous, vulgar, sexually indecent or illegible." [Doc. 54 at 1]. Plaintiff also objects to having to recast over one hundred pages of his piecemeal complaint. While Plaintiff's arguments may be correct, they are entirely

irrelevant. As pointed out by the Magistrate Judge, Fed. R. Civ. P. 8 requires that a complaint contain a “a short and plain statement of the claim showing that the pleader is entitled to relief.” As it now stands, the combined complaint is not at all short or plain, and the Magistrate Judge was entirely correct in requiring an amended complaint.

Attached to Plaintiff’s objections is a document that he styles as a “Complaint Re: James Clay Fuller, magistrate judge of the 11th District Court made with reliance on 28 U.S.C. secs. 351 to 364,” [Doc. 54-1], which seeks the removal of Magistrate Judge Fuller from this Court. This document is chock-full of bigoted, homophobic, and other objectionable language.

Most outrageously, Plaintiff makes the statement that “[i]t is my belief that Fuller is a North Star Jew, member of the Klu Klux Klan and possesses animus due to his membership with the clan and their Earthly turf battle for Atlanta and other realms.” [Id. at 3]. Such scurrilous language, directed at a judge of this Court, demonstrates the highest degree of contempt and will not be tolerated. Plaintiff is now **ON NOTICE** that any future such outburst may well result in the initiation of criminal contempt proceedings against him. See United States v. Carnesoltas, 715 F. Supp. 1079, 1081 (S.D. Fla. 1989) (noting that the use of undignified and reprehensible language directed at a court or its employees constitutes misconduct);

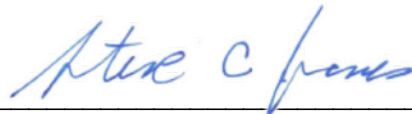


Kennedy v. Deschenes, CV 17-60110-CIV, 2017 WL 7733157, at \*1 (S.D. Fla. June 16, 2017) (initiating contempt proceeding against a pro se plaintiff who directed “disrespectful and reprehensible statements” at a magistrate judge); Bethel v. Escambia County, Fla., 3:06CV70/RV/EMT, 2006 WL 3780716, at \*2 (N.D. Fla. Dec. 20, 2006) (threatening contempt proceedings against pro se plaintiffs who directed disrespectful language at a magistrate judge).

Having reviewed the R&R in light of Plaintiff’s objections, this Court agrees with the Magistrate Judge that, because of Plaintiff’s repeated and willful refusal to comply with a lawful order of this Court, dismissal of this action with prejudice is appropriate. Accordingly, the R&R, [Doc. 52], is hereby **ADOPTED** as the order of this Court, and this action is hereby **DISMISSED WITH PREJUDICE** under Fed. R. Civ. P. 41(b) and Local Rule 41.3(A) as a sanction for Plaintiff’s willful and repeated refusal to comply with this Court’s order of July 2, 2020, compounded by his contemptuous statements in his objections.

The Clerk is **DIRECTED** to close this action.

**IT IS SO ORDERED**, this 7th day of May, 2021.



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HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JERMAINE E. SPENCE,	:	PRO SE CIVIL ACTION
Plaintiff,	:	42 U.S.C. § 1983
	:	
v.	:	
	:	
STATE OF GA. — CITY OF	:	
HAPEVILLE MUN. CT. SERVS.,	:	
et al,	:	CIVIL ACTION NO.
Defendants.	:	1:19-CV-5722-SCJ-JCF

**FINAL REPORT AND RECOMMENDATION**

Plaintiff Jermaine E. Spence, a former Georgia civil detainee, has filed a *pro se* 42 U.S.C. § 1983 civil rights complaint. (Doc. 1.) Plaintiff subsequently filed four motions to amend the complaint to add additional claims, exhibits, and make numerous specific alterations to his prior pleadings, as well as a separate complaint that this Court ordered consolidated and docketed in this action. (Docs. 3, 5, 11, 13, 20.) In an order entered July 2, 2020, this Court granted in part Plaintiff's motions for leave to amend and ordered Plaintiff within 30 days to submit a single, superseding amended complaint containing all claims that he wished to raise. (Doc. 19 at 5, 7-8.) This Court instructed Plaintiff that it would not permit piecemeal

amendment of his pleadings through motions and letters.<sup>1</sup> (Id. at 5.) This Court warned Plaintiff that failure to timely file an amended complaint could result in the dismissal of this action under Local Rule 41.3(A)(2).

Plaintiff did not file an amended complaint as directed. Rather, on July 13, 2020, Plaintiff filed a “partial no contest reply” to this Court’s July 2, 2020, order. In his reply, Plaintiff stated that he “will not be amending the suit[,]” that “this case is in good clerical and grammatical order,” and that “no further submissions will be made in this case to amend [this action].” (Doc. 27 at 1-2.) Plaintiff indicated that he wished to proceed on his prior filings. (Id. at 1-2.)

On January 19, 2021, this Court entered an order directing Plaintiff to show cause within 21 days why this action should not be dismissed for failure to comply with this Court’s order of July 2, 2020. (Doc. 34 at 4.) This Court noted that Plaintiff’s “partial no contest reply” was in direct contravention of its order to file a

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<sup>1</sup> As this Court noted in its January 19, 2021, order, Plaintiff’s pleadings required this Court and any potential Defendants to cross-reference six different complaints and motions to discern what claims Plaintiff was attempting to raise. This manner of pleading violates Fed. R. Civ. P. 8’s requirement mandating “a short and plain statement of the claim showing that the pleader is entitled to relief,” and no Defendant could reasonably be expected to frame a response to it.

single, superseding amended complaint within 30 days, and instructed Plaintiff that he may not disregard this Court's orders. (Id. at 3-4.)

Plaintiff has filed a response to this Court's January 19, 2021, show cause order, in which he argues that the undersigned United States Magistrate Judge lacks authority under 28 U.S.C. § 636 to involuntarily dismiss this action, that his suit is meritorious and ripe for review, and that his amendment of his prior pleadings by motion was in compliance with Fed. R. Civ. P. 15. (Doc. 45 at 1-2; Doc. 47 at 1.) Plaintiff still has not filed the single, superseding amended complaint required by this Court's order of July 2, 2020.

Federal Rule of Civil Procedure 41(b) permits a court to dismiss an action *sua sponte* for failure to obey a court order. Betty K Agencies, Ltd. v. M/V Monada, 432 F.3d 1333, 1337 (11th Cir. 2005); see also Fed. R. Civ. P. 41(b). Additionally, a district court possesses the power to dismiss for failure to comply with a court order as "an inherent aspect of its authority to enforce its orders and ensure prompt disposition of lawsuits." Jones v. Graham, 709 F.2d 1457, 1458 (11th Cir. 1983). Dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion. Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989).

Dismissal with prejudice under Rule 41(b) is an extreme sanction requiring both a clear record of willful conduct and a finding that lesser sanctions are inadequate. Zocaras v. Castro, 465 F.3d 479, 483 (11th Cir. 2006). Mere negligence or confusion is not sufficient to justify a finding of willful conduct. Id. In considering whether to dismiss a case under Rule 41(b), “a district court must consider the possibility of alternative, lesser sanctions.” Id. at 484. Nevertheless, dismissal can be appropriate where there is a “clear record of delay or willful contempt and a finding that lesser sanctions would not suffice” to serve the interests of justice and to secure future compliance with court orders. Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985) (quotation marks omitted). Willful disobedience of court orders may justify dismissal with prejudice under Rule 41(b). See, e.g., Wells v. Gourmet Servs. Inc., 748 F. App’x 235, 241-42 (11th Cir. 2018) (affirming dismissal with prejudice under Rule 41(b) as a sanction for plaintiff’s repeated failure to comply with orders concerning email communications); Brent v. Hyundai Motors Am., 679 F. App’x 976, 977-78 (11th Cir. 2017) (per curiam) (holding that plaintiff’s disobedience of the district court’s order to amend his complaint warranted dismissal with prejudice under Rule 41(b)).

Here, Plaintiff's failure to comply with this Court's order to amend his complaint was not the result of negligence or confusion. See Zocaras, 465 F.3d at 483. Rather, Plaintiff's responses establish that he made a deliberate decision to disregard this Court's order of July 2, 2020. (See Doc. 27 at 1-2; Doc. 45 at 1-2; Doc. 47 at 1.) This Court informed Plaintiff that his pleadings failed to state a cause of action, instructed him that he could not disregard court orders, and explicitly warned him on at least two occasions that this suit could be dismissed for failure to comply with court orders. (See Doc. 19 at 8; Doc. 34 at 3-4.) These warnings have not induced Plaintiff's compliance. Instead, Plaintiff has filed a response disputing this Court's authority to sanction him. (See Doc. 45 at 1.)

Accordingly, the undersigned finds that the record clearly establishes Plaintiff's willful contempt of this Court's lawful orders. See Goforth, 766 at 1533 (holding that dismissal under Rule 41(b) may be appropriate where a clear record establishes willful contempt); see also Moon, 863 F.2d at 837. Further, upon review of the record and consideration of Plaintiff's responses to this Court's orders of July 2, 2020, and January 19, 2021, the undersigned concludes that repeated warnings of potential sanctions have not persuaded Plaintiff to comply with the Court's orders, and that Plaintiff's conduct demonstrates that sanctions less than dismissal with

prejudice are unlikely to secure future compliance and the prompt and efficient conclusion of this litigation. See Goforth, 766 at 1535. Moreover, crafting an award of monetary sanctions is not feasible in this case, as Plaintiff is indigent and proceeding *in forma pauperis*. (See Doc. 34 at 2); see also Moon, 863 F.2d at 837 (holding that, regardless of financial status, “[n]o one should be permitted to misuse the courts with impunity”). In any event, lesser sanctions would not serve the interest of justice in light of the express nature of Plaintiff’s disregard for this Court’s orders and warnings of potential sanctions. See Wells, 748 F. App’x 235, 241-42; Brent, 679 F. App’x at 977-78.

Therefore, it is recommended that this action be **DISMISSED WITH PREJUDICE** under Fed. R. Civ. P. 41(b) and Local Rule 41.3(A) as a sanction for Plaintiff’s willful and repeated refusal to comply with this Court’s order of July 2, 2020.

The Clerk of Court is **DIRECTED** to terminate the referral to the undersigned United States Magistrate Judge.

**SO RECOMMENDED**, this 22nd day of March, 2021.

/s/ J. Clay Fuller

J. Clay Fuller

United States Magistrate Judge



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JERMAINE E. SPENCE, Plaintiff,	:	<i>PRO SE</i> CIVIL ACTION
	:	42 U.S.C. § 1983
	:	
v.	:	
	:	
STATE OF GA. — CITY OF	:	
HAPEVILLE MUN. CT. SERVS.,	:	
et al,	:	CIVIL ACTION NO.
Defendants.	:	1:19-CV-5722-SCJ-JCF

**ORDER**

Plaintiff Jermaine E. Spence, a former Georgia civil detainee, has filed a *pro se* amended 42 U.S.C. § 1983 civil rights complaint. The matter is before the Court on Plaintiff's non-prisoner application for leave to proceed *in forma pauperis* ("IFP") and on this Court's Order of July 2, 2020. For the reasons stated below, Plaintiff's IFP application is **GRANTED**. Additionally, Plaintiff is **ORDERED** to show cause within **TWENTY-ONE (21) DAYS** of the entry date of this Order why this case should not be dismissed based on his failure to comply with this Court's Order of July 2, 2020.

## **I. IFP STATUS**

Plaintiff originally filed a prisoner IFP application pursuant to 28 U.S.C. § 1915(a) when he initiated this case. (See Doc. 1.) However, this Court noted that Plaintiff's return address was a state psychiatric hospital, and that it was unclear whether Plaintiff was a prisoner subject to the Prison Litigation Reform Act ("PLRA") or a non-prisoner civil detainee. (See Doc. 19 at 3.) Consequently, this Court ordered Plaintiff to clarify in writing whether he was a prisoner and to submit the appropriate IFP application. (Id. at 4-5, 6-7.)

Plaintiff has now filed a non-prisoner IFP application. (Doc. 26.) Plaintiff's recent pleadings state that he is a former civil detainee who was released from state custody on June 6, 2020. (Doc. 27 at 1.) Based on Plaintiff's financial affidavit, the undersigned finds that Plaintiff does not have sufficient financial means to pay a filing fee. (See Doc. 26 at 1-5.) Accordingly, Plaintiff's application for IFP status [26] is **GRANTED**.

## **II. FAILURE TO COMPLY**

Plaintiff filed his original complaint on December 19, 2019. (Doc. 1-1.) Plaintiff then filed four motions to add additional claims, exhibits, and to make numerous specified alterations to his prior filings, as well as a separate complaint that

this Court ordered consolidated and docketed in this suit. (Docs. 3, 5, 11, 13, 20.) In its Order of July 2, 2020, this Court granted in part Plaintiff's motions for leave to amend and ordered Plaintiff within 30 days to submit a single, superseding amended complaint containing all claims that Plaintiff wished to raise. (Doc. 19 at 5, 7-8.) This Court instructed Plaintiff that it would not permit piecemeal amendment of his pleadings through motions and letters. (Id. at 5.) This Court specifically warned Plaintiff that failure to timely comply with its directions to file an amended complaint could result in the dismissal of this action under Local Rule 41.3(A)(2).

On July 13, 2020, Plaintiff filed a "partial no contest reply" to this Court's Order of July 2, 2020. In his reply, Plaintiff states that he "will not be amending the suit[]," that "this case is in good clerical and grammatical order," and that "no further submissions will be made in this case to amend the matter of Case 1:19-cv-5722." (Doc. 27 at 1-2.) Rather, Plaintiff indicates that wishes to proceed on his prior filings. (See generally id. at 1-2.)

Plaintiff's reply is in direct contravention of this Court's Order to file a single, superseding amended complaint within 30 days. This Court has already explained to Plaintiff that it will not permit piecemeal pleading or amendment of his claims. (See Doc. 19 at 5.) As drafted, this Court must cross-reference six different complaints

and motions to discern what claims Plaintiff is attempting to raise. (See Docs. 1-1, 3, 5, 11, 13, 20.) This manner of pleading violates Fed. R. Civ. P. 8's requirement mandating "a short and plain statement of the claim showing that the pleader is entitled to relief," and no defendant can reasonably be expected to frame a response to Plaintiff's present filings. See Fed. R. Civ. P. 8(a)(2); Johnson v. City of Shelby, 574 U.S. 10, 12 (2014) (per curiam) (holding that a plaintiff must plead facts sufficient to inform the defendant of "the factual basis" for the complaint).

Plaintiff may not disregard this Court's Orders. See Owens v. Pinellas Cty. Sheriff's Dep't, 331 F. App'x 654, 656 (11th Cir. 2009) (per curiam) (describing a district court's authority to *sua sponte* dismiss a plaintiff's action for failure to comply with any order of the court). Accordingly, Plaintiff is **ORDERED** to **SHOW CAUSE** by filing a written response within **TWENTY-ONE (21) DAYS** of the date of this Order why this action should not be **DISMISSED** pursuant to Fed. R. Civ. P. 41(b) and Local Rule 41.3(A)(2) for failure to comply with this Court's Order of July 2, 2020, directing him to file a single, superseding amended complaint within 30 days. Plaintiff is **CAUTIONED** that failure to respond within the specified time period may result in the dismissal of this action under Local Rule 41.3.

### **III. CONCLUSION**

For the reasons stated above, Plaintiff's application for IFP status [26] is **GRANTED**.

Plaintiff is **ORDERED** to **SHOW CAUSE** by filing a written response within **TWENTY-ONE (21) DAYS** of the date of this Order why this action should not be **DISMISSED** pursuant to Fed. R. Civ. P. 41(b) and Local Rule 41.3(A)(2) for failure to comply with this Court's Order of July 2, 2020.

Plaintiff is **CAUTIONED** that any failure to respond within the specified time period may result in the dismissal of this action under Local Rule 41.3(A)(2). See N.D. Ga. Civ. R. 41.3(A)(2). Further, Plaintiff must keep the Clerk of Court advised of his address at all times. Plaintiff is **ADVISED** that this action will be subject to dismissal under Local Rule 41.2 if he does not keep the Clerk of Court advised of his current address at all times while this action is pending.

The Clerk of Court is **DIRECTED** to resubmit this action to the undersigned United States Magistrate Judge upon receipt of Plaintiff's response or at the expiration of the time period noted above.

**SO ORDERED**, this 19th day of January, 2020.

/s/ J. Clay Fuller

J. Clay Fuller

United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JERMAINE E. SPENCE,

Plaintiff,

v.

CITY OF HAPEVILLE MUN. CT.  
SERVS., et al.,

Defendants.

PRISONER CIVIL RIGHTS

42 U.S.C. § 1983

CIVIL ACTION FILE NO.  
1:19-CV-5722-SCJ-JCF

**ORDER**

This civil action is before the Court for consideration of the Non-Final Report and Recommendation of Magistrate Judge J. Clay Fuller [Doc. 21], to which no objections have been filed. After reviewing the Report & Recommendation, it is received with approval and **ADOPTED** as the Opinion and Order of this Court. Accordingly, Plaintiff's "motion for provisional remedy (injunction)" [Doc. 10] is hereby **DENIED**.

**IT IS SO ORDERED**, this 30<sup>th</sup> day of December, 2020.

s/Steve C. Jones

STEVE C. JONES

UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JERMAINE E. SPENCE, Plaintiff,	:	PRISONER CIVIL RIGHTS 42 U.S.C. § 1983
	:	
v.	:	
	:	
CITY OF HAPEVILLE MUN. CT. SERVS., et al., Defendants.	:	CIVIL ACTION NO. 1:19-CV-5722-SCJ-JCF

**ORDER FOR SERVICE OF  
REPORT AND RECOMMENDATION**

The Report and Recommendation of the United States Magistrate Judge, made in accordance with 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72(b), and this Court's Local Rule 72, has been filed. The Clerk is **DIRECTED** to serve a copy of the Report and Recommendation, together with a copy of this Order, upon counsel for the parties and upon any unrepresented parties.

Within 14 days of service of this Order, a party may file written objections, if any, to the Report and Recommendation. See 28 U.S.C. § 636(b)(1)(C). If objections are filed, they shall specify with particularity the alleged error or errors made (including reference by page number to the transcript if applicable) and shall be served upon the opposing party. The party filing objections will be responsible for



obtaining and filing the transcript of any evidentiary hearing for review by the District Court. If no objections are filed, the Report and Recommendation may be adopted as the opinion and order of the District Court, and on appeal, the Court of Appeals will deem waived any challenge to factual and legal findings to which there was no objection. 11th Cir. R. 3-1.

The Clerk is **DIRECTED** to submit the Report and Recommendation with objections, if any, to the District Court after expiration of the above time period.

**SO ORDERED**, this 2nd day of July, 2020.

/s/ J. Clay Fuller

J. Clay Fuller

United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JERMAINE E. SPENCE, Plaintiff,	:	PRISONER CIVIL RIGHTS 42 U.S.C. § 1983
	:	
v.	:	
	:	
CITY OF HAPEVILLE MUN. CT. SERVS., et al., Defendants.	:	CIVIL ACTION NO. 1:19-CV-5722-SCJ-JCF

**NON-FINAL REPORT AND RECOMMENDATION**

The matter is before the Court on Plaintiff's "motion for provisional remedy (injunction)," which the Court liberally construes as a motion for a preliminary injunction. (Doc. 10.) In his motion, Plaintiff states that Georgia Department of Public Health officials refuse to provide him with photocopy services, which hampers his ability to litigate this case. (*Id.* at 1.) Consequently, Plaintiff requests an injunction directing unspecified Georgia Department of Public Health personnel to provide him with photocopier access. (*Id.*)

In order to obtain preliminary injunctive relief, Plaintiff must show the following: "(1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant

outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.” United States v. Alabama, 691 F.3d 1269, 1281 (11th Cir. 2012) (citation omitted). “[A] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion’ as to each of the four prerequisites.” Well v. Ferrero, 142 F. App’x 405, 407 (11th Cir. 2005) (citation omitted).

Here, Plaintiff’s motion does not address each of the four prerequisites for injunctive relief, includes no specific factual allegations, and does not identify any specific actions by the named defendants that he seeks to enjoin. Consequently, Plaintiff has failed to carry his heavy burden to show that injunctive relief is warranted. Additionally, Plaintiff’s numerous pleadings in this action show that his access to this Court has not been hindered. Accordingly, **IT IS RECOMMENDED** that Plaintiff’s “motion for provisional remedy (injunction)” [10] be **DENIED**.

**SO RECOMMENDED**, this 2nd day of July, 2020.

/s/ J. Clay Fuller  
J. Clay Fuller  
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:

JERMAINE E. SPENCE,  
Plaintiff,

:  
:  
: CIVIL ACTION NOS.  
: 1:19-CV-5722-SCJ-JCF  
: 1:19-CV-5723-SCJ-JCF  
:

**ORDER**

Plaintiff Jermaine E. Spence has filed two related civil rights complaints in Case No. 1:19-cv-5722-SCJ-JCF ("Case -5722") and Case No. 1:19-cv-5723-SCJ-JCF ("Case -5723"). Plaintiff also has applied for leave to proceed *in forma pauperis* ("IFP") under the Prison Litigation Reform Act of 1995 ("PLRA"), 28 U.S.C. § 1915(a). However, it is unclear from Plaintiff's filings whether he is a prisoner subject to those provisions or a patient at a state psychiatric hospital. For the reasons stated below, the Court **DIRECTS** the Clerk of Court to consolidate Case -5723 with Case -5722. Plaintiff's application for IFP status in Case -5722 is **DENIED WITHOUT PREJUDICE**, and Plaintiff is **ORDERED** within **THIRTY (30) DAYS** to clarify to the Court whether he is a prisoner. Plaintiff's motions to amend his complaint [3], [5], [11], [13] in Case -5722 are **GRANTED IN PART**, and

Plaintiff is **ORDERED** to file an amended complaint within **THIRTY (30) DAYS**. Plaintiff's motion for summonses [6] and "motion for institution to sign affidavit pauper form" [14] in Case -5722 are **DENIED AS PREMATURE**.

**I. CONSOLIDATION**

A review Plaintiff's complaints in Case -5722 and Case -5723 reveals that Plaintiff's complaint in Case -5722 asserts claims against defendant organizations, while Case -5723 asserts claims against individual employees of those same organizations arising out of the same underlying transactions. As a result, the undersigned finds that Case -5723 is duplicative of Case -5722.

Because these actions "involve a common question of law or fact," the Court finds that it would "avoid unnecessary cost or delay" to consolidate these two actions pursuant to Fed. R. Civ. P. 42(a). "Rule 42(a) should be used to expedite trial and eliminate unnecessary repetition and confusion. A motion to consolidate is not required; the court may invoke Rule 42(a) *sua sponte*." Miller v. U.S. Postal Serv., 729 F.2d 1033, 1036 (5th Cir. 1984) (internal citation omitted).

Accordingly, the Clerk is **DIRECTED** to **ADMINISTRATIVELY CLOSE** Case No. 1:19-cv-5723-SCJ-JCF and consolidate it with Case No. 1:19-cv-5722-SCJ-JCF. The Clerk of Court is further **DIRECTED** to docket the complaint [1] in

Case -5723 as an amended complaint in Case -5722. In light of this disposition, all pending motions in Case -5723 are **DENIED AS MOOT**. Because Case -5723 has been administratively closed and consolidated with Case -5722, Plaintiff shall file all future pleadings only in Case -5722. All of this Court's directions below refer only to the surviving action in Case -5722.

## **II. IFP APPLICATION**

Plaintiff seeks IFP status under the PLRA and has filed an executed authorization allowing his custodian to withdraw funds from his inmate account. (Case -5722 Doc. 1 at 2.) If Plaintiff is indeed subject to the requirements of the PLRA, his application is incomplete because it lacks (1) a certificate completed by an authorized institutional officer providing his inmate account balances, and (2) a complete, certified copy of his inmate account statement for the preceding six months. See 28 U.S.C. § 1915(a). Plaintiff has filed a separate motion indicating that officials at the Georgia Department of Behavioral Health refuse to fill out his IFP forms. (Case -5722 Doc. 14.)

It is unclear from Plaintiff's filings whether he is a prisoner or a patient at a state psychiatric hospital. Civil detainees are not subject to the partial-payment plan or other restrictions of the PLRA. See Troville v. Venz, 303 F.3d 1256, 1260

(11th Cir. 2002) (holding that the PLRA's definition of "prisoner" applies only to persons incarcerated as punishment for a criminal conviction).

It is therefore **ORDERED** that Plaintiff must clarify to the Court whether he is a prisoner by filing a written response within **THIRTY (30) DAYS** of the entry date of this Order. If Plaintiff is a prisoner seeking IFP status, he must also submit a complete prisoner financial affidavit with all required information, signatures, certifications, and attachments.

If Plaintiff is a prisoner, Plaintiff is cautioned that, even if he is allowed to proceed IFP, under 28 U.S.C. § 1915(b)(1), he nevertheless must pay the full amount of the \$350.00 filing fee from his inmate account. If Plaintiff has sufficient assets in that account, the Court must assess an initial partial filing fee based on those assets. In addition, by order of the Court, Plaintiff's custodian will deduct further amounts from his account in monthly or other incremental installments in the amount of 20% of the preceding month's income credited to the account, in each month in which the account balance exceeds \$10.00, until the \$350.00 fee is paid in full. Plaintiff will be required to pay the fee regardless of whether he is successful with his suit. If Plaintiff does not want to have funds deducted from his inmate account, he should file a notice stating that he voluntarily dismisses this action.

Because it is unclear whether Plaintiff is subject to the requirements of the PLRA, his "motion for institution to sign affidavit pauper form" [14] is **DENIED AS PREMATURE**. Nevertheless, the Court expects state officials to fully comply with their obligation to assist Plaintiff in obtaining documents and information that federal law requires him to provide when seeking IFP status. If Plaintiff is a prisoner and his custodian refuses to complete the required IFP application, Plaintiff should immediately notify this Court.

Plaintiff's motion for summonses [6] is **DENIED AS PREMATURE**.

### **III. AMENDMENT**

Plaintiff has filed four motions to amend his complaint to add additional claims, exhibits, and to make numerous specific alterations to his prior filings. (Case -5722 Docs. 3, 5, 11, 13.) Plaintiff's motions to amend are **GRANTED IN PART**, and Plaintiff is **ORDERED** to file a single amended complaint within **THIRTY (30) DAYS** of the entry date of this order. The amended complaint will supersede all previous complaints filed in Case -5722 and Case -5723 and must include all claims against all defendants that Plaintiff wishes to assert. Plaintiff is advised that he cannot make piecemeal amendments to his claims through motions and letters.



#### IV. CONCLUSION

For the foregoing reasons, the Clerk of Court is **DIRECTED** to **ADMINISTRATIVELY CLOSE** Case No. 1:19-cv-5723-SCJ-JCF and consolidate it with Case No. 1:19-cv-5722-SCJ-JCF. The Clerk of Court is further **DIRECTED** to docket the complaint [1] in Case -5723 as an amended complaint in Case -5722. All pending motions in Case -5723 are **DENIED AS MOOT**. Plaintiff is **DIRECTED** to file all future pleadings only in Case -5722. All of this Court's directions below refer only to the surviving action in Case -5722.

Plaintiff's IFP application is **DENIED WITHOUT PREJUDICE** and Plaintiff is **ORDERED** to clarify to the Court whether he is a prisoner by filing a written response within **THIRTY (30) DAYS** of the entry date of this Order.

If Plaintiff is a prisoner seeking IFP status, he is **ORDERED** to submit a complete prisoner financial affidavit within **THIRTY (30) DAYS** of the entry date of this Order. The affidavit should include (1) an executed authorization form allowing Plaintiff's custodian to withdraw funds from his inmate account on an incremental basis, (2) a completed certificate, signed by an authorized institutional officer, stating the current balance in Plaintiff's inmate account and the average

monthly balance and deposit in that account for the preceding six months, and (3) a certified copy of Plaintiff's inmate account statement for the preceding six months.

Plaintiff's motion for summonses [6] and "motion for institution to sign affidavit pauper form" [14] are **DENIED AS PREMATURE**.

Plaintiff's motions to amend [3], [5], [11], [13] are **GRANTED IN PART** and Plaintiff is **ORDERED** to submit an amended complaint within **THIRTY (30) DAYS** of the entry date of this Order. The amended complaint will supersede Plaintiff's prior pleadings in Case -5722 and Case -5723. Plaintiff may not incorporate by reference any portion of his previous complaints into the amended complaint.

Plaintiff is **DIRECTED** to: (1) draft his amended complaint on the complaint form provided by the Clerk of this Court; (2) add no more than ten pages to the form; (3) **write clearly and on only one side of each page**; (4) **join defendants only where the right to relief asserted against them arises from the same transaction, occurrence, or series of transactions and occurrences and at least one question of law or fact common to all defendants will arise in the action**; (5) provide the name and address of each intended defendant; (6) present each claim in separate numbered paragraphs, with each claim limited to a single set of circumstances or

events; (7) in each claim, provide only factual allegations concerning events in which he himself suffered some injury or deprivation, clearly identify the defendant(s) responsible for the injury or deprivation that is alleged, clearly identify the action or omission of the defendant(s) that shows the defendant(s)' responsibility for the alleged injury or deprivation, and omit legal arguments or conclusions; (8) clearly state what relief he seeks from this Court; (9) provide information on the administrative relief he has pursued; and (10) provide detailed information on all prisoner civil actions that he previously has filed.

Plaintiff is **CAUTIONED** that any failure to timely comply with this Court's directions to submit (1) a written response indicating his prisoner status, (2) in the event that he is a prisoner, a complete prisoner financial affidavit, and (3) an amended complaint may result in the dismissal of this action under Local Rule 41.3(A)(2). See N.D. Ga. Civ. R. 41.3(A)(2). Further, Plaintiff must keep the Clerk of Court advised of his address at all times. Plaintiff is **ADVISED** that this action will be subject to dismissal under Local Rule 41.3 if he does not keep the Clerk of Court advised of his current address at all times while this action is pending.

The Clerk of Court is **DIRECTED** to (1) forward Plaintiff copies of this Court's prisoner financial affidavit, this Court's 42 U.S.C. § 1983 complaint form,

pre-stamped with "Amended Complaint / No. 1:19-cv-5722-SCJ-JCF," and this Order, and (2) resubmit this case to the undersigned United States Magistrate Judge upon receipt of Plaintiff's response, IFP application, and amended complaint, or at the expiration of the time period noted above.

**SO ORDERED**, this 2nd day of July, 2020.

/s/ J. Clay Fuller

J. Clay Fuller

United States Magistrate Judge