

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
CAROLINA

Mr. Gary Nelson v. Ms. Small and Mr. Elder

Nelson v. Small · No. 0:26-cv-00113-DCC · Decided May 1, 2026

SUMMARY

The United States District Court for the District of South Carolina grants Plaintiff’s motion to proceed in forma pauperis and dismisses the action without prejudice and without issuance or service of process. The court declines to adopt the magistrate judge’s recommendation concerning disposition of the in forma pauperis motion but otherwise accepts the recommendation after finding no clear error.

CASE DETAILS

COURT	United States District Court for the District of South Carolina
WRITING FOR THE COURT	Donald C. Coggins, Jr.
JURISDICTION	United States District Court for the District of South Carolina
DECIDED	May 1, 2026
DOCKET	0:26-cv-00113-DCC
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's Report and Recommendation recommending dismissal without prejudice and without issuance and service of process. No objections were filed.
STANDARD OF REVIEW	In the absence of a timely objection, the district court reviews the Report and Recommendation for clear error on the face of the record. Specific objections require de novo review under 28 U.S.C. § 636(b).
PRECEDENTIAL VALUE	Unpublished district court order; precedential status is unknown.

TOPICS

- civil procedure
- pleadings

PRACTICE AREAS

- Civil procedure
- Federal courts
- Prisoner civil rights

QUESTIONS PRESENTED

1. What standard of review applies when a party does not object to a magistrate judge's Report and Recommendation?
2. Whether the court should grant Plaintiff's motion for leave to proceed in forma pauperis.
3. Whether the action should be dismissed without prejudice and without issuance and service of process.

HOLDINGS

1. When no timely objection is filed, the district court need only review the Report and Recommendation for clear error on the face of the record rather than conduct de novo review.
2. Plaintiff's motion for leave to proceed in forma pauperis should be granted.
3. The action was dismissed without prejudice and without issuance and service of process.

KEY QUOTATIONS

"in 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." (416 F.3d at 315)

FACTUAL BACKGROUND

Plaintiff Gary Nelson filed a complaint and sought leave to proceed in forma pauperis. A magistrate judge recommended dismissal without prejudice and without issuance and service of process. Plaintiff did not file objections, and the Report was not returned as undeliverable.

PROCEDURAL HISTORY

Plaintiff filed a complaint and a motion for leave to proceed in forma pauperis. The matter was referred to Magistrate Judge Paige J. Gossett, who recommended dismissal without prejudice and without issuance and service of process. Plaintiff did not object. The district court granted leave to proceed in forma pauperis, declined to adopt the recommendation that the motion be terminated without a ruling, found no clear error in the remainder of the Report, and dismissed the action.

DISPOSITION

dismissed

CASES CITED

- Mathews v. Weber, 423 U.S. 261 (1976)
- Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005)

OPINION

Small

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Mr. Gary Nelson,) Case No. 0:26-cv-00113-DCC) Plaintiff,)) v.) ORDER) Ms. Small and Mr.
Elder,)) Defendants.) _____) This matter is before the Court
upon Plaintiff's complaint. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil
Rule 73.02(B)(2), (D.S.C.), this matter was referred to United States Magistrate Judge Paige J.
Gossett for pre-trial proceedings and a Report and Recommendation ("Report"). On March 17,
2026, the Magistrate Judge issued a Report recommending that this action be dismissed without
prejudice and without issuance and service of process. ECF No. 15. The Magistrate Judge advised
Plaintiff of the procedures and requirements for filing objections to the Report and the serious
consequences for failing to do so. Plaintiff has not filed objections to the Report and the time to do
so has lapsed.¹ 1 The Court notes that on April 30, 2026, Plaintiff submitted proposed USM-285s
in an envelope stamped with a different address than the one presently on the docket. Significantly,
Plaintiff has been informed that it is his responsibility to keep the Court apprised of his current
address; the documents inside the envelope were dated April 22, 2026—more than a month after
the issuance of the Report; and the Report has not been returned as undeliverable. Accordingly,
there is no indication that Plaintiff has not received the Report. The Magistrate Judge makes only a
recommendation to this Court. The recommendation has no presumptive weight, and the
responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423
U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the
Report of the Magistrate Judge to which a specific objection is made. The Court may accept,
reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or
recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court
will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial
Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in 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." (citation omitted)). While no objections have been filed, the standard of review
as recited by the Magistrate Judge is clearly erroneous. The Magistrate Judge states that "[t]he
Complaint has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to
commence an action in federal court without prepaying the administrative costs of proceeding with
the lawsuit" ECF No. 15 at 2. However, to date, the motion for leave to proceed in forma
pauperis has not been ruled upon. The Court further finds that this error is harmless as review is
still permissible under 28 U.S.C. § 1915A. Upon review of the motion for leave to proceed in
forma pauperis, the Court finds that it should be granted. Thus, the Court respectfully declines to
adopt the portion of the Report recommending that the motion for leave to proceed in forma
pauperis be terminated without granting or denying it.² As to the remainder of the Report, the

Court finds no clear error and agrees with the Report's recommendation. This action is DISMISSED without prejudice and without issuance and service of process. IT IS SO ORDERED. s/ Donald C. Coggins, Jr. United States District Judge May 1, 2026 Spartanburg, South Carolina 2

The Court further notes that, because a no serve order has not been issued in this case, the South Carolina Department of Corrections' finance office has not been notified that a debt is owed to the United States District Court for the District of South Carolina. Significantly, the in forma pauperis statute only allows "commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees" 28 U.S.C. § 1915(a)(1) (emphasis added).