

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
MICHIGAN, SOUTHERN DIVISION

Devonte Ross v. Thomas Anderson

Ross · No. 2:23-cv-11785 · Decided February 12, 2026

SUMMARY

The United States District Court for the Eastern District of Michigan adopts a magistrate judge’s report and recommendation in Devonte Ross’s civil action against dentist Thomas Anderson. The court sets aside the clerk’s default, denies Ross’s motion for default judgment, dismisses the amended complaint with prejudice for failure to prosecute, and denies Anderson’s motion to dismiss as moot. The dismissal follows Ross’s failure to respond to motions and an order to show cause, as well as his failure to update his address.

CASE DETAILS

COURT	United States District Court for the Eastern District of Michigan, Southern Division
WRITING FOR THE COURT	David M. Lawson
JURISDICTION	United States District Court for the Eastern District of Michigan, Southern Division
DECIDED	February 12, 2026
DOCKET	2:23-cv-11785
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed and adopted a magistrate judge's report and recommendation after the plaintiff failed to file objections. The court set aside the clerk's entry of default, denied the plaintiff's motion for default judgment, dismissed the amended complaint with prejudice for failure to prosecute, and denied the defendant's motion to dismiss as moot.
STANDARD OF REVIEW	Because no objections were filed, the court stated that the plaintiff waived further appellate review and that the court was released from its duty to independently review the report and recommendation.
PRECEDENTIAL VALUE	unpublished

TOPICS

default

default judgment

motions to dismiss

civil procedure

PRACTICE AREAS

civil procedure

civil rights

prisoner litigation

QUESTIONS PRESENTED

1. Whether the clerk's entry of default against Anderson should be set aside where Anderson was not properly served and asserted a potentially meritorious statute-of-limitations defense.
2. Whether Ross's motion for default judgment should be denied after the default was set aside.
3. Whether the amended complaint should be dismissed with prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b).
4. Whether Anderson's motion to dismiss should be decided after the complaint was dismissed for failure to prosecute.

HOLDINGS

1. The court set aside the default against Anderson because the amended complaint was not properly served and Anderson had asserted a meritorious statute-of-limitations defense.
2. Ross's motion for default judgment was denied because the default against Anderson was set aside.
3. The amended complaint was dismissed with prejudice under Federal Rule of Civil Procedure 41(b) because Ross failed to respond to the defendant's motions, failed to notify the court of his new address, and failed to respond to the order to show cause.
4. Anderson's motion to dismiss was denied as moot because the amended complaint had already been dismissed with prejudice for failure to prosecute.
5. A party's failure to file timely objections waives further appellate review and relieves the district court of its duty to independently review the report and recommendation.

FACTUAL BACKGROUND

Devonte Ross, a Michigan prisoner, alleged that he was injured by a botched dental procedure performed by prison dentist Thomas Anderson. The Clerk entered default against Anderson, but Anderson asserted that he had not been properly served and that the complaint was untimely under the applicable statute of limitations. Ross failed to respond to Anderson's motions, failed to update the court with his new address after release from prison, and failed to respond to an order to show cause.

PROCEDURAL HISTORY

Plaintiff filed an amended complaint alleging injury from a botched dental procedure by a prison dentist. After the Clerk entered default against the defendant, the defendant moved to set it aside and moved to dismiss, asserting improper service and a statute-of-limitations defense. The magistrate judge recommended setting aside the default, denying default judgment, dismissing for failure to prosecute under Federal Rule of Civil Procedure

41(b), and denying the motion to dismiss as moot. The district court adopted that recommendation because the objection period had expired without objections.

DISPOSITION

dismissed

CASES CITED

- Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987)
- Thomas v. Arn, 474 U.S. 140, 149 (1985)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION DEVONTE ROSS, Plaintiff, Case Number 23-11785 v. Honorable David M. Lawson Magistrate Judge Elizabeth A. Stafford THOMAS ANDERSON, Defendant.
_____/ ORDER ADOPTING REPORT AND RECOMMENDATION, SETTING ASIDE DEFAULT, DENYING MOTION FOR DEFAULT JUDGMENT, DISMISSING COMPLAINT FOR FAILURE TO PROSECUTE, AND DENYING MOTION TO DISMISS AS MOOT Plaintiff Devonte Ross, a Michigan prisoner, filed a complaint alleging that he was injured by a botched dental procedure at the hands of a prison dentist.

The Court referred the case to Magistrate Judge Elizabeth A. Stafford to conduct pretrial proceedings. The Clerk entered a default against dentist Thomas Anderson, but eventually he filed a motion to set it aside, alleging that he never was served properly. He also pointed out that the complaint was filed out of time, that is, beyond the statute of limitations deadline, and moved to dismiss the case.

Judge Stafford ordered Ross to respond to the defendants' motions. When he failed to do that, she ordered him to show cause why the case should not be dismissed. On January 21, 2026 Judge Stafford filed a report under 28 U.S.C. § 636(b) recommending that the Court grant Anderson's motion to set aside the default entered by the Clerk (ECF No. 47), deny plaintiff Devonte Ross's motion for default judgment against Anderson (ECF No. 39), dismiss the amended complaint with prejudice on the Court's own motion for failure to prosecute, and deny as moot defendant Anderson's motion to dismiss (ECF No. 48).

Judge Stafford recommended that the default against Anderson be set aside, and the plaintiff's motion for default judgment be denied, because Anderson was not served properly with the amended complaint and had a meritorious statute-of-limitations defense against the allegations in the amended complaint. Judge Stafford also recommended that the amended complaint be dismissed for failure to prosecute, pursuant to Civil Rule 41(b), because the plaintiff failed to

respond to Anderson's motions, failed to notify the Court of his new address after being released from prison, and failed to respond to Judge Stafford's order to show cause why the case should not be dismissed.

The deadline for filing objections to the report has passed, and the plaintiff has not objected to the recommended disposition. The plaintiff's failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter.

Thomas v. Arn, 474 U.S. 140, 149 (1985). Accordingly, it is ORDERED that the report and recommendation (ECF No. 54) is ADOPTED, defendant Thomas Anderson's motion to set aside default (ECF No. 47) is GRANTED, the default against Anderson is SET ASIDE, the plaintiff's motion for default judgment against Anderson (ECF No. 39) is DENIED, the amended complaint is DISMISSED WITH PREJUDICE for failure to prosecute, and Anderson's motion to dismiss (ECF No. 48) is DENIED as moot. s/David M. Lawson DAVID M. LAWSON United States District Judge Dated: February 12, 2026