

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

Jason Anthony Marks (#227273),)	
Plaintiff,)	
)	Case No. 19 C 50112
v.)	
)	Judge Philip G. Reinhard
Molly Engelkes, et al.,)	
Defendants.)	

ORDER

This matter comes before the court on the Report and Recommendation (“R & R”) [68] of Magistrate Judge Jensen recommending that the court dismiss the case under Federal Rule of Civil Procedure 41(a)(2) without prejudice. The magistrate imposed no terms or conditions on the dismissal. Defendants filed a timely objection pursuant to Rule 72(b) arguing the case should be dismissed with prejudice not without prejudice [69]. The court has reviewed the record in this case and finds that the January 16, 2020, R & R is not clearly erroneous. Under Rule 41(a)(2), “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” This dismissal is without prejudice unless the order states otherwise. *Id.* The court should consider whether dismissal would result in “plain legal prejudice” to the defendant. *F.D.I.C. v. Knostman*, 966 F.2d 1133, 1142 (7th Cir. 1992). Factors to be considered when determining if a defendant has suffered “plain legal prejudice” include “the defendant’s effort and expense in preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and the fact that a motion for summary judgment has been filed by the defendant.” *Id.* In support of a dismissal with prejudice, defendants argue “significant public resources were expended” in defending the case, and plaintiff “ultimately received the primary relief he sought” in the form of medical care. The record in this case reflects it was filed eight months ago [1], defendants filed a short motion to dismiss [20], answered the amended complaint [59], responded to plaintiff’s motion for preliminary injunction [57], and participated in a one-day hearing on the preliminary injunction with two witnesses (which was suspended upon agreement of the parties) [66]. Based on this review of the record, the court finds defendants have failed to show “plain legal prejudice” regarding a dismissal without prejudice. Therefore, the court accepts and adopts in its entirety Judge Jensen’s R & R. Plaintiff’s oral motion to dismiss under Rule 41(a)(2) without prejudice is granted. This case is closed.

Date: 02/03/2020

ENTER:


 United States District Court Judge