

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KATHALINA MONACELLI,

Plaintiff,

vs.

Case No. 2:09-cv-122-FtM-29DNF

EDISON STATE COLLEGE, KEN WALKER,
LUCINDA KELLEY, and PAMELA FAIRFAX,

Defendants.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #7), filed March 18, 2009, recommending that plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. #6) be denied and the case dismissed for failure to state a claim. Plaintiff filed Objections (Doc. #8) on March 23, 2009.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. v. State

Bd. of Educ., 896 F.2d 507, 512 (11th Cir. 1990) (quoting H.R. 1609, 94th Cong. § 2 (1976)). Even in the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994) (Table).

After conducting an independent examination of the file and upon due consideration of the leave granted to amend the complaint, the Report and Recommendation, and plaintiff's Objections, the Court accepts the Report and Recommendation of the magistrate judge and overrules the objections.

Accordingly, it is now


ORDERED:

1. The Report and Recommendation (Doc. #7) is hereby **adopted** and the findings incorporated herein. The objections thereto are overruled.

2. Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. #6) is **DENIED** and the case is dismissed without prejudice for failure to state a claim.

3. The Clerk shall enter judgment accordingly, terminate all deadlines and motions as moot, and close the file.

DONE AND ORDERED at Fort Myers, Florida, this 13th day of April, 2009.



JOHN E. STEELE
United States District Judge

Copies:
Hon. Douglas N. Frazier
United States Magistrate Judge

Plaintiff