Johnson v. Westermeyer Doc. 176

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

LARRY DALE JOHNSON,

No. 3:11-cv-00514-ST

Plaintiff,

OPINION AND ORDER

v.

RAYMOND WESTERMEYER,

Defendant.

MOSMAN, J.,

On April 30, 2014, Magistrate Judge Stewart issued her Findings and Recommendation ("F&R") [170] in the above-captioned case, recommending that summary judgment be granted for Mr. Westermeyer on all of Mr. Johnson's claims. Mr. Johnson objected [174], and Dr. Westermeyer responded [175].

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. I am not bound by the recommendations of the magistrate judge; instead, I retain responsibility for making the final determination. I am required to review de novo those portions of the report or any specified findings or recommendations within it to which an objection is made. 28 U.S.C. § 636(b)(1). However, I am not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those

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portions of the F&R to which no objections are addressed. See Thomas v. Arn, 474 U.S. 140,

149 (1985); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level

of scrutiny under which I am required to review the F&R depends on whether objections have

been filed, in either case I am free to accept, reject, or modify any part of the F&R. 28 U.S.C.

§ 636(b)(1).

Upon review, I agree with Judge Stewart's recommendation, and I ADOPT the F&R

[170] as my own opinion. Accordingly, Dr. Westermeyer's Motion for Summary Judgment

[138] is GRANTED and Mr. Johnson's Motion for Summary Judgment [132] is DENIED.

Further, Mr. Johnson's Objection to Order Granting Defendant's Motion To Withdraw Motion

for Summary Judgment [154] is deemed referred for review under Rule 72(a) of the Federal

Rules of Civil Procedure. Because Judge Stewart's order [136] was neither clearly erroneous nor

contrary to law, the objection is OVERRULED.

IT IS SO ORDERED.

DATED this 19th day of June, 2014.

/s/ Michael W. Mosman

MICHAEL W. MOSMAN United States District Judge

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