Elliot v. Staton et al Doc. 46

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF OREGON

## PORTLAND DIVISION

**BRETT ELLIOTT**,

Case No.: 3:11-cv-01536-ST

Plaintiff.

v.

OPINION AND ORDER ADOPTING FINDINGS AND RECOMMENDATIONS

SHERIFF DANIEL STATON, CHIEF DEPUTY TIM MOORE, CAPTAIN MONTE RESIER, BOB SKIPPER, CAPTAIN CAROL HASLER, JOHN DOES #1-10, Multnomah County Sheriff Department employees, and MULTNOMAH COUNTY, by and through the Multnomah County Sheriff's Office, a political subdivision of the State of Oregon,

Defendants.

Michelle R. Burrows and Sara K. Staggs, Michelle R. Burrows, PC, 618 NW Glisan, Ste. 203, Portland, OR 97209. Attorneys for Plaintiff.

Jenny M. Morf, County Attorney, and Katharine von Ter Stegge, Assistant County Attorney, Office of the Multnomah County Attorney, 501 SE Hawthorne Blvd., Ste. 500, Portland, OR 97214. Attorneys for Defendants.

## SIMON, District Judge.

On April 20, 2012, Magistrate Judge Janice Stewart filed Findings and Recommendations in this case. Dkt. 25. Judge Stewart recommended that Defendants' Motion to Dismiss, Dkt. 14, should be granted in part and denied in part. No party has filed objections.

Under the Federal Magistrates Act, the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a

de novo determination of those portions of the report or specified proposed findings or

recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard

of review. In such cases, "[t]here is no indication that Congress, in enacting [the Magistrates Act]

intended to require a district judge to review a magistrate's report[.]" Thomas v. Arn, 474 U.S.

140, 152 (1985); see also United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en

banc) (court must review de novo magistrate's findings and recommendations if objection is

made, "but not otherwise").

Although in the absence of objections no review is required, the Magistrates Act "does

not preclude further review by the district judge[] sua sponte . . . under a de novo or any other

standard." Thomas, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the

Federal Rules of Civil Procedure recommend that "[w]hen no timely objection is filed," the court

review the magistrate's findings and recommendations for "clear error on the face of the record."

No objections having been made, the court follows the recommendation of the Advisory

Committee and reviews Magistrate Judge Stewart's findings and recommendations for clear

error on the face of the record. No such error is apparent. Accordingly, the court **ADOPTS** 

Magistrate Judge Stewart's Findings and Recommendation, Dkt. 25.

IT IS SO ORDERED.

Dated this 25th day of June, 2012.

/s/ Michael H. Simon

Michael H. Simon

United States District Judge