

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LAMAR DUANE COBB §
v. § CIVIL ACTION NO. 6:10cv638
SMITH COUNTY SHERIFF’S §
DEPARTMENT, ET AL.

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Lamar Cobb, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Smith County Jail. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On February 8, 2011, the Magistrate Judge ordered Cobb to file an amended complaint setting out his claims with more factual specificity, including providing a date for the incident in question and specifying the individuals whom he wished to sue. Cobb received a copy of this order on February 15, 2011, but to date has not complied, nor has he responded in any way.

On March 30, 2011, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. Because it could not be determined whether or not a dismissal without prejudice could operate as a dismissal with prejudice, the Magistrate Judge also recommended that the statute of limitations be suspended for a period of 60 days following the date of entry of final judgment in the case. Cobb received a copy of this Report on April 1, 2011, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and

recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 8) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the statute of limitations is hereby SUSPENDED for a period of 60 days following the date of entry of final judgment in the case. This suspension of the limitations period will not affect any claims which were already barred at the time that this lawsuit as originally filed. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 19th day of May, 2011.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**