

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6913

BRENT AUSTIN,

Plaintiff - Appellant,

v.

DR. R. STEEN; JON OZMINT; DR. J. ALEWINE; DR. M. BEINOR;
NURSE D. COOK; WARDEN STONE; CECILIA REYNOLDS; JEANNE
MCKAYE; JERRY WASHINGTON; JANICE PHILLIPS; N. DAYNE HAILE,

Defendants - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Greenville. R. Bryan Harwell, District
Judge. (6:10-cv-02286-RBH)

Submitted: November 15, 2011 Decided: November 17, 2011

Before NIEMEYER and KEENAN, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Dismissed in part, affirmed in part by unpublished per curiam
opinion.

Brent Austin, Appellant Pro Se. Shelton Webber Haile, Mason
Abram Summers, RICHARDSON, PLOWDEN & ROBINSON, PA, Columbia,
South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brent Austin seeks to appeal both the magistrate judge's report and recommendation and the district court's order accepting the recommendation and denying relief on his 42 U.S.C. § 1983 (2006) complaint. We dismiss in part and affirm in part.

The district court referred Austin's case to a magistrate judge pursuant to 28 U.S.C.A. § 636(b)(1)(B) (West 2006 & Supp. 2011). The magistrate judge recommended that relief be denied and advised Austin that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Instead of filing objections, Austin filed an appeal.

This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2006), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2006); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 545-46 (1949). A magistrate judge's report and recommendation is neither a final order nor an appealable interlocutory or collateral order. See Harvey v. Addison, 175 F.3d 1217, 1219 (10th Cir. 1999). Thus, we dismiss Austin's appeal of the magistrate judge's report and recommendation for lack of jurisdiction.

Turning to Austin's appeal of the final order, the timely filing of specific objections to a magistrate judge's

recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Austin has waived appellate review of the district court's judgment by failing to file specific objections after receiving proper notice. We therefore affirm the judgment of the district court.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED IN PART;
AFFIRMED IN PART