

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHNNIFER COUCH, #228987,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:08-CV-859-MHT
)	[WO]
)	
OFFICER FITZPATRICK, et al.,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Johnnifer Couch [“Couch”], a state inmate, filed the instant complaint challenging actions taken against him by correctional officers during his confinement at the Bullock County Correctional Facility. On December 16, 2008, Couch filed a document in which he requests that the court “remove CO1 Fitzpatrick out [of] the complaint because he was never at work at the time of the incident.” *Court Doc. No. 13*. The court construes this document as a motion to dismiss.

Upon consideration of the plaintiff’s motion to dismiss, the court concludes that this motion is due to be granted. Furthermore, since the plaintiff concedes that officer Fitzpatrick was not in any way involved with the incident about which he complains, the court discerns that the claims against this individual should be dismissed with prejudice.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. The plaintiff’s motion to dismiss be GRANTED.
2. The claims against officer Fitzpatrick be dismissed with prejudice.
3. Officer Fitzpatrick be dismissed as a party to this cause of action.
4. This case, with respect to the plaintiff’s claims against the remaining defendants, be

referred back to the undersigned for additional proceedings.

It is further

ORDERED that on or before December 30, 2008 the plaintiff may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 18th day of December, 2008.

/s/Terry F. Moorner
TERRY F. MOORER
UNITED STATES MAGISTRATE JUDGE