

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

JOSEPH BENNEFIELD, #235865,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:09-CV-54-TMH
)	[WO]
)	
NIKKA MORRIS, et al.,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Joseph Bennefield [“Bennefield”], a state inmate, filed this 42 U.S.C. § 1983 action on January 22, 2009. On May 29, 2009, Bennefield filed a motion for voluntary dismissal of this case in accordance with Rule 41(a)(2) of the Federal Rules of Civil Procedure (Court Doc. No. 29). In this motion, Bennefield concedes the instant case presents identical claims for relief as those pending before this court in *Bennefield v. O’Hara, et al.*, 2:06-CV-307-MEF-SRW (M.D. Ala.), and he seeks dismissal of this case without prejudice so that he may proceed on his claims in the previously filed civil action. Upon consideration of the plaintiff’s motion to dismiss, the court concludes that this motion is due to be granted. Furthermore, since disposition of the claims has not yet occurred and to avoid confusion regarding the merits of the claims, the court determines that this case should be dismissed without prejudice.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that the plaintiff’s motion to dismiss be granted and that this case be dismissed without prejudice. It is further

ORDERED that on or before June 15, 2009 the parties 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 1st day of June, 2009.

/s/ Susan Russ Walker
SUSAN RUSS WALKER
CHIEF UNITED STATES MAGISTRATE JUDGE