

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

GENE COGGINS,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 3:09cv539-MEF
)	
TOWN OF JACKSON'S GAP,)	
)	
Defendant.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

By Order (Doc. #4) entered June 16, 2009, the Court denied Plaintiff Ruben Eugene Coggins’s Motion for Leave to Proceed *In Forma Pauperis* (Doc. #2). The Court instructed Plaintiff to pay the civil filing fee on or before June 30, 2009, and warned him that failure to do so would result in a recommendation by the undersigned that this matter be dismissed.

On June 26, 2009, Plaintiff filed a “Reply” to the Order of June 16, 2009. *See* (Doc. #9). In that Reply, Plaintiff argued that, based on an *ex parte* hearing in March of 2009, everything about his personal income was previously “settled.” (Doc. #7 at 4). Indeed, in its Order the Court referred to prior proceedings in this Court in which it was determined that Plaintiff does not qualify for *in forma pauperis* status. *See* Order (Doc. #4) at 1-2 (citing *Coggins v. Crouch*, Civil Action No. 3:09cv64-MHT-TFM (M.D. Ala. 2009)). If Plaintiff intends to rely on the prior rulings of the Court denying his previous motions for leave to proceed *in forma pauperis* in other cases, then he has effectively foreclosed this Court’s inquiry.

Plaintiff has also filed a “Motion for Default and Default Judgment,” (Doc. #8), in which he appears to assert that he is entitled to a default judgment due to Defendant’s failure to file a

responsive pleading. Of course, there can be no default where Defendant has not been properly served with Plaintiff's complaint because Plaintiff has not been granted leave to proceed *in forma pauperis* and has not paid the filing fee. Defendant was improperly served with a copy of the complaint by Plaintiff, in which he included a copy of one of this Court's subpoena forms which was unsigned by the Clerk of Court but was modified by Plaintiff to reflect the style of this case. See Response (Doc. #5) and Order (Doc. #6). The Court was advised that Defendant has engaged in this practice numerous times previously. The Court conducted a hearing at which Defendant was advised that such conduct is a violation of the Federal Rules of Civil Procedure and an abuse of the Court's process. Defendant was warned that continuing this practice will result in sanctions.

In any event, Plaintiff has failed to pay the filing fee as instructed. Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this action be DISMISSED due to Plaintiff's failure to pay the filing fee and that Plaintiff's "Motion for Default and Default Judgment" (Doc. #8) be DENIED. It is further

ORDERED that the parties are DIRECTED to file any objections to the said Recommendation **on or before July 21, 2009**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. 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 recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report 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 8th day of July, 2009.

/s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE