

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
EASTERN DIVISION**

<b>ROBERT THOMAS JENKINS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 1:14-cv-01060-CLS-JHE</b>
	)	
<b>PETER LODEWICK, and</b>	)	
<b>DRU LAWLER,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM OPINION**

The magistrate judge filed a report and recommendation on June 15, 2015, recommending that this action filed pursuant to 42 U.S.C. § 1983 be dismissed under 28 U.S.C. § 1915A(b) for failing to state a claim upon which relief may be granted. (Doc. 16). The magistrate judge further recommended that plaintiff's requests to proceed without prepayment of fees, (docs. 4, 11 and 12), be denied as moot. (Doc. 16). Plaintiff filed objections to the report and recommendation on June 29, 2015. (Doc. 17). Also pending is plaintiff's "Motion to Award Damages Sought Evidence in Support Thereof," which contains a request for a property lien. (Doc. 14).

A review of plaintiff's objections reveals that he simply disagrees with the report and recommendation. He asserts that, as a pro se litigant, the court should liberally construe his claims, possibly as a medical malpractice action. As previously

stated in the report and recommendation, plaintiff has failed to state a claim under 42 U.S.C. § 1983 because he has not alleged his rights were violated by a person acting under color of state law. Both defendants named in this action are private citizens, engaged in private, albeit unlawful conduct. Plaintiff cannot use a § 1983 claim as a vehicle to pursue a state court medical malpractice action.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the court is of the opinion that the magistrate judge's report is due to be, and it hereby is, ADOPTED, and his recommendation is ACCEPTED.

Accordingly, the complaint is due to be dismissed pursuant to 28 U.S.C. § 1915A(b) for failing to state a claim upon which relief may be granted, and the motions for leave to proceed in forma pauperis (docs. 11 and 12) are DENIED as MOOT. Because the plaintiff fails to state a claim, the motion to award damages/request for property lien (doc. 14) is also DENIED as MOOT. A Final Judgment will be entered.

DONE this 27th day of July, 2015.

  
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United States District Judge