

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

TAVARES ANTWAN OLIVER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 5:12-cv-02043-SLB-MHH
)	
WHNT 19 NEWS, et. al.,)	
)	
Defendants.)	

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on December 3, 2012, recommending that this action, docketed by the clerk as an action pursuant to 42 U.S.C. § 1983, be dismissed without prejudice for lack of subject matter jurisdiction under Rule 12(h)(3) of the *Federal Rules of Civil Procedure*. The magistrate judge further recommended that the order granting the plaintiff leave to proceed *in forma pauperis* and requiring him to return a signed Prisoner Consent Form and pay a partial filing fee of \$10.85 (doc. 3) be vacated, that the partial filing fee be returned to the plaintiff, and the that the Warden Order requiring future payments toward the filing fee (doc. 5) also be vacated. No objections were filed.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the Court is of the opinion that the magistrate judge's report is due to be and is hereby **ADOPTED** and the recommendation is **ACCEPTED**. Accordingly, both the order granting the plaintiff leave to proceed *in forma pauperis* and requiring him to return a signed Prisoner Consent Form and pay a partial filing fee of \$10.85 (doc. 3) as well as the Warden Order requiring future payments toward the filing fee (doc. 5) are due to be VACATED, the partial filing

fee of \$10.85 paid by the plaintiff is due to be returned to him, and this action is due to be dismissed pursuant to Rule 12(h)(3) of the *Federal Rules of Civil Procedure* and the authorities cited by the Magistrate Judge in her report and recommendation.

A Final Judgment will be entered.

DONE, this 17th day of March, 2013.



SHARON LOVELACE BLACKBURN
CHIEF UNITED STATES DISTRICT JUDGE