

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

VIRGIL MITCHELL,	)	
	)	
<b>Plaintiff,</b>	)	
	)	
vs.	)	CIV. ACT. NO. 1:20-cv-411-TFM-C
	)	
DHR, <i>et al.</i> ,	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM OPINION ORDER**

On October 28, 2020, the Magistrate Judge entered a report and recommendation which recommends Plaintiff’s complaint be dismissed without prejudice for lack of subject matter jurisdiction. *See* Doc. 7. Plaintiff timely filed objections. *See* Doc. 8. The Court has reviewed the report and recommendation, objections, and conducted a de novo review of the case file. For the reasons discussed below, the objections are **OVERRULED** and the Report and Recommendation is **ADOPTED**.

28 U.S.C. § 1915(e)(2)(B) provides, in pertinent part: “[T]he court shall dismiss the case at any time if the court determines that . . . the action or appeal – (i) is frivolous or malicious, (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” Thus, when granting permission to proceed *in forma pauperis*, the Court is required to perform a review and shall dismiss a case if it meets any of these statutory reasons. Additionally, as noted by the Magistrate Judge, a federal court is a court of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 1675, 128 L. Ed. 2d 391 (1994).

Though Plaintiff filed objections, they contain little discussion which addresses the

substance of the Report and Recommendation. Whether Plaintiff's allegations are true is not the issue here. Rather, the issue is this Court's jurisdiction to hear the allegations. The burden is on the Plaintiff to establish jurisdiction to be heard in federal court (as opposed to a state or local court) and he fails to meet that burden. Further, he was given the opportunity to amend a noted deficiency and the amended complaint still fails to establish jurisdiction. Therefore, Plaintiff's objections are **OVERRULED**.

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a *de novo* determination of those portions of the Report and Recommendation to which objection is made, the Report and Recommendation (Doc. 7) is **ADOPTED** as the opinion of the Court. Accordingly, it is **ORDERED** that this action is **DISMISSED without prejudice** for lack of subject matter jurisdiction.

**DONE** and **ORDERED** this 2nd day of December, 2020.

/s/Terry F. Moorer  
TERRY F. MOORER  
UNITED STATES DISTRICT JUDGE