

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

TROY RODDY, ADC #103051

PLAINTIFFS

VS.

1:15CV00122 BRW/PSH

BRAWLEY, et al.

DEFENDANTS

ORDER

Pending is a Recommended Disposition (Doc. No. 43) from United States Magistrate Judge Patricia S. Harris. Plaintiff has filed objection.¹ For the reasons set out below, the Recommended Disposition is adopted as this Court's findings in all respects.

Defendants requested that Plaintiff's *in forma pauperis* status be revoked because he is a "three-striker" under the PLRA and has not shown that he is in imminent danger. However, Plaintiff claims that he has hepatitis C and is not being treated properly. Defendants argue that Plaintiff does not have hepatitis C, and provided medical records purporting to support their position. However, a medical note from August 24, 2015 indicates that a nurse "gave [Plaintiff] material regarding his +Hep C lab results."²

Defendants were directed to supplement the record with the relevant medical records and provide a doctor's explanation of the records.³ In an affidavit, Dr. Robert Floss explained how to read the hepatitis C results, indicated that he reviewed Plaintiff's records from 2009 forward, and concluded that Plaintiff has never tested positive for hepatitis C.⁴ Dr. Floss noted that a test from

¹Doc. Nos. 46, 52.

²Doc. No. 34-1.

³Doc. No. 49

⁴Doc. No. 50-1.

October 20, 2015 indicated that Plaintiff was negative for hepatitis C. He also notes that on September 24, 2015, a test indicated that Plaintiff's liver was functioning normally. Both of these tests were conducted after the date Plaintiff claims he was diagnosed with hepatitis C.

In response to Defendants' supplement, Plaintiff argues that he was never retested, and Defendants have manipulated the medical records.⁵ Plaintiff's conclusory allegations are unsupported by the record. First, the tests were conducted by a third-party laboratory, not Defendants. Second, on October 20, 2015, Plaintiff was advised that he had previously been misinformed regarding his hepatitis C status and was offered another screening for hepatitis C.⁶ Despite Plaintiff's continued claim that he has hepatitis C and his ailments stem from that, the October 20, 2015 lab report showed him negative for hepatitis C.⁷ So, either Plaintiff no longer has hepatitis C or he never had it (which is more likely, since it is typically a chronic disease).

CONCLUSION

After careful consideration, the Recommended Disposition are approved and adopted as this Court's findings in all respects. Accordingly Defendants' Motion to Revoke Plaintiff's *in forma pauperis* status (Doc. No. 34) is GRANTED, and Plaintiff's case is DISMISSED, without prejudice. If Plaintiff pays the full \$400.00 filing and administrative fees, and files a motion to reopen, within 30 days of the date of this order, the case will be reopened. Plaintiff's Motion

⁵Doc. No. 52.

⁶Doc. No. 34-1.

⁷*Id.*

for Subpoena of Accurate Lab Report (Doc. No. 51) and Motion to Appoint Counsel (Doc. No. 53) are DENIED.

An in forma pauperis appeal taken from the order and judgment dismissing this case would be frivolous and not in good faith.

IT IS SO ORDERED this 1st day of June, 2016.

/s/ Billy Roy Wilson
UNITED STATES DISTRICT JUDGE