

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

**ANTONIO DEMARION COLEY
ADC #92842**

PLAINTIFF

v. **Case No. 2:12-cv-00160 KGB/HDY**

MARYBETH FLOYD, et al.

DEFENDANTS

ORDER

The Court has received Proposed Findings and Recommendations from United States Magistrate Judge H. David Young recommending that the Court grant plaintiff Antonio Demario Coley's motion to dismiss voluntarily his claims against the Arkansas Department of Correction ("ADC") defendants and deny Mr. Coley's motion for preliminary injunction and temporary restraining order (Dkt. No. 109). After careful consideration, the Court finds that the Proposed Findings and Recommendations should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects (Dkt. No. 109). The Court grants Mr. Coley's motion to dismiss (Dkt. No. 108-1) and dismisses with prejudice Mr. Coley's claims against defendants Danny Burl, Paulette Green, Larry May, Denise Jones, Claudia Harris, Wendy Kelley, and Ray Hobbs. The Court denies Mr. Coley's motion for preliminary injunction and temporary restraining order (Dkt. No. 104).

The Court also has received from Judge Young Proposed Findings and Recommendations recommending that the Court grant the motion for summary judgment filed by the remaining defendant, Dr. Marybeth Floyd (Dkt. 126). Mr. Coley has objected and moved for Judge Young's recusal or disqualification (Dkt. Nos. 123, 124, 127, 128, 130). Mr. Coley asserts that Judge Young demonstrated prejudice and bias that requires his recusal by denying Mr. Coley's motion to strike the declaration of Dr. Joseph Hughes that Dr. Floyd submitted in

support of her motion for summary judgment and through various other prior adverse rulings. A judge is required to disqualify himself “in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). “The question is ‘whether the judge’s impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case.’” *United States v. Dehghani*, 550 F.3d 716, 721 (8th Cir. 2008) (citation omitted). “A party introducing a motion to recuse carries a heavy burden of proof; a judge is presumed to be impartial and the party seeking disqualification bears the substantial burden of proving otherwise.” *Pope v. Fed. Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992) (citation omitted). “[A] federal judge has a duty to sit where not disqualified which is equally as strong as the duty to not sit where disqualified.” *Laird v. Tatum*, 409 U.S. 824, 837 (1972) (citations omitted).

“Adverse rulings, standing alone, do not establish judicial bias or prejudice, nor create a reasonable question of judicial impartiality.” *United States v. Oaks*, 606 F.3d 530, 537 (8th Cir. 2010) (quoting *United States v. Schwartz*, 535 F.2d 160, 165 (2d Cir.1976)). Mr. Coley has pointed to no evidence suggesting that any of Judge Young’s adverse rulings were motivated by bias, and the Court sees no such evidence. The Court finds no basis for Judge Young’s disqualification and denies Mr. Coley’s motions to disqualify Judge Young.

Turning to the Proposed Findings and Recommendations in regard to the pending motion for summary judgment, after carefully considering Mr. Coley’s objections and making a *de novo* review of the record in this case, the Court concludes that the Proposed Findings and Recommendations should be, and hereby are approved and adopted in their entirety as this Court’s findings in all respects (Dkt. No. 126). The Court grants Dr. Floyd’s motion for

summary judgment (Dkt. No. 110) and dismisses with prejudice Mr. Coley's claims against Dr. Floyd.

It is therefore ordered that:

1. The Court grants Mr. Coley's motion to dismiss voluntarily his claims against the ADC defendants (Dkt. No. 108-1) and dismisses with prejudice his claim against Mr. Burl, Ms. Green, Mr. May, Ms. Jones, Ms. Harris, Ms. Kelley, and Mr. Hobbs.

2 The Court denies Mr. Coley's motion for preliminary injunction and temporary restraining order (Dkt. No. 104).

3. The Court denies Mr. Coley's motions to disqualify Judge Young (Dkt. Nos. 123, 128).

4. The Court grants Dr. Floyd's motion for summary judgment (Dkt. No. 110) and dismisses with prejudice Mr. Coley's claims against Dr. Floyd.

5. The Court grants Mr. Coley's pending motion for copies (Dkt. No. 131).

6. The Court denies as moot all other pending motions.

7. The Court certifies that an *in forma pauperis* appeal from the order and judgment dismissing this action is considered frivolous and not in good faith.

SO ORDERED this the 30th day of March, 2015.



Kristine G. Baker
United States District Judge