

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

TONY L. HAMILTON
Reg #12422-017

PLAINTIFF

v.

No. 2:17-cv-22-DPM-JTK

USA; and K. BRISTER, Officer,
Individually and in official capacities

DEFENDANTS

ORDER

1. On *de novo* review, the Court partly adopts the recommendation, and partly declines it, returning some issues to the Magistrate Judge for further consideration. FED. R. CIV. P. 72(b)(3).

2. The Court sustains Hamilton's objections about his retaliatory-threat claim. *No 10 at 3*. Threats made in retaliation for using the grievance procedure can state a claim. *E.g., Burgess v. Moore*, 39 F.3d 216, 218 (8th Cir. 1994). This claim, *No 2 at 2-3*, needs screening and a further recommendation.

3. The Magistrate Judge correctly pointed out that Hamilton's FTCA claim for assault is explicitly exempted from the statutory sovereign immunity waiver. 28 U.S.C. § 2680(h). And the defamation claim is likewise exempted. *McAdams v. Reno*, 64 F.3d 1137, 1144-45 (8th Cir. 1995). But the statute doesn't exempt a claim for intentional infliction of emotional distress.

Raz v. United States, 343 F.3d 945, 948 (8th Cir. 2003). This claim, No 2 at 2, 10-11, needs screening and a recommendation, too.

4. Hamilton's state law claims should remain in the case until the Court decides whether Hamilton has stated any federal claims for retaliatory threats or intentional infliction of emotional distress. All of Hamilton's other claims are dismissed without prejudice for failure to state a claim.

* * *

Recommendation, No 6, partly adopted and partly declined without prejudice. The Court returns this case to the Magistrate Judge for further proceedings, including handling Hamilton's pending motion to amend his complaint, No 8.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

25 April 2017