

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

**CAZ KENNEDY,
ADC #127322**

PLAINTIFF

V.

Case No. 4:07-CV-00795 SWW-BD

JOHN BYUS, et al.

DEFENDANTS

ORDER

The Court has received the Findings and Recommended Disposition from Magistrate Judge Beth Deere, recommending that summary judgment be entered in Defendants' favor. No objections have been filed. However, on December 22, 2008, Plaintiff filed a motion for voluntary dismissal (docket entry #90).

After careful review, the Court concludes that the Recommended Disposition should be, and hereby is, approved and adopted as this Court's findings in all respects. For the reasons stated in the recommended disposition, Plaintiff has failed to create genuine issues for trial, Defendants' well-supported motion for summary judgment must be granted, and Plaintiff's motion for voluntary dismissal must be denied. *See Kern v. TXO Production Corp.*, 738 F.2d 968, 970 (8th Cir. 1984)(noting that where a defendant has "already won its case" voluntary dismissal without prejudice is precluded).

IT IS THEREFORE ORDERED that Defendants' motion for summary judgment

(docket entry #43) is GRANTED, and Plaintiff's motion for voluntary dismissal (docket entry #90) is DENIED. Pursuant to the judgment entered together with this order, Plaintiff's remaining claims are DISMISSED WITH PREJUDICE.

IT IS SO ORDERED THIS 5TH DAY OF JANUARY, 2009.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE