

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

WINSTON HOLLOWAY
ADC #67507

PLAINTIFF

V.

5:08CV00196 WRW/HDY

ANITA WEAST, et al.

DEFENDANTS

ORDER

I have received the proposed findings and recommendations (Doc. No. 119) from United States Magistrate Judge H. David Young. Plaintiff has filed objections (Doc. No. 121).

I decline to adopt the Recommended Disposition.

After review of the findings and recommendations and a *de novo* review of the record, I believe this case is not suitable to a pre-jury decision to dismiss Plaintiff's claims based on his failure to introduce sufficient evidence. The record indicates that Plaintiff, as an incarcerated *pro se* litigant, experienced difficulties gathering evidence. Additionally, despite Plaintiff's limited ability to collect and submit evidence, a review of the recorded hearing indicates that Plaintiff's testimony, taken as true, presents a close call -- at least on some of his claims. Before Plaintiff's claims are dismissed, he should be allowed to gather and produce evidence with the assistance of counsel.

For these reasons, I am appointing Richard N. Watts¹ as counsel, in conformity with Rule 83.7 of the Local Rules for the Eastern and Western Districts of Arkansas, to represent the

¹Watts, Donovan & Tilley, P.A., 200 South Commerce Street, Ste 200, Little Rock, Arkansas, 72201-1769.

Plaintiff in all further proceedings. Also, I will hold a second evidentiary hearing on Tuesday, June 29, 2010, at 9:30 a.m., Richard Sheppard United States Courthouse, 500 West Capitol Avenue, Little Rock, Arkansas.

THE CLERK IS DIRECTED to send counsel a copy of this Order and Local Rule 83.7. Counsel will access the file from CM/ECF. If counsel is unable to obtain a copy of the file from CM/ECF, he should contact Mary Johnson at 501-604-5144, and a copy of the file, or any portion thereof, will be provided free of charge. Pursuant to Rule 83.7, counsel must make written application to withdraw within fifteen (15) days; otherwise, the appointment will be effective.

IT IS SO ORDERED this 2nd day of December, 2009.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE