

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

EDDIE E. BRILEY, JR.
ADC #116921

PLAINTIFF

v.

Case No. 5:10-cv-198-DPM

TYRA TYLER, DAVID WILLIAMS,
MARVIN ROBERTS, and ED ADAMS

DEFENDANTS

ORDER

Eddie Briley alleges that the Defendants used excessive force against him after he refused to give up his blanket and sheet for laundering. Pending before this Court are Magistrate Judge H. David Young's Proposed Findings and Recommendations on the merits, *Document No. 35*, Eddie Briley's objection, *Document No. 37*, and Briley's motion for copies, *Document No. 40*.

Briley has appealed from this Court's interlocutory order in his favor denying Defendants' motion to dismiss and from Judge Young's pending recommendation. *Document No. 41*. This premature notice of appeal does not deprive this Court of jurisdiction to make a final and appealable decision. *Gas Aggregation Services, Inc. v. Howard Avista Energy, LLC*, 458 F.3d 733, 739 (8th Cir. 2006); *Wisconsin Mutual Insurance Co. v. United States*, 441 F.3d 502, 504-05 (7th Cir. 2006).

After *de novo* review, including listening to the pre-jury hearing and considering the exhibits, the Court adopts Judge Young's recommended disposition as its own with one change. FED. R. CIV. P. 72(b)(3). Briley's real complaint is that he could not refuse the weekly blanket and sheet washing. His resulting excessive-force claim, however, fails as a matter of law. Considering the need for force, the force used in light of that need, and the resulting injury, as Judge Young concluded the record presents no jury question on whether the officers used force maliciously and sadistically to cause harm. They did not. Briley's case is dismissed with prejudice. The Court declines to hold, however, that an *in forma pauperis* appeal from this order and the accompanying Judgment would not be in good faith. 28 U.S.C.A. § 1915(a)(3) (West 2006).

Briley's motion for copies, *Document No. 40*, is denied as moot.

So Ordered.



D.P. Marshall Jr.
United States District Judge

15 July 2011