

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

**ROBERT WILLIAM AVERY,
ADC #652373**

PLAINTIFF

v.

5:12-cv-00062-KGB-HDY

MARK CASHION, et al.

DEFENDANTS

ORDER

The Court has received Proposed Findings and Recommendations from United States Magistrate Judge H. David Young (Dkt. No. 106). Defendants filed timely objections to the Proposed Findings and Recommendations (Dkt. No. 125). After a review of the Proposed Findings and Recommendations, and the timely objections received thereto, as well as a *de novo* review of the record, the Court adopts in part and modifies in part the Proposed Findings and Recommendations.

The Court modifies the Proposed Findings and Recommendations to grant summary judgment in favor of defendants on plaintiff Robert William Avery's claim for injunctive relief. Defendants moved for summary judgment on Mr. Avery's claim for injunctive relief, asserting that his claims were moot due to his transfer from Delta Regional Unit, the correctional facility at which defendants were employed and about which Mr. Avery complained. In the Proposed Findings and Recommendations, the Court determined that Mr. Avery's request for injunctive relief should not be dismissed because Mr. Avery's address had changed several times and his current location was unclear at the time. However, since the Court issued its Proposed Findings and Recommendations, Mr. Avery filed a notice of change of address indicating that he has been released from the Arkansas Department of Corrections and is currently residing in Springdale, Arkansas (Dkt. No. 122). Therefore, the Court finds that Mr. Avery's claim for injunctive relief

is moot and should be dismissed with prejudice.

The Court adopts the Proposed Findings and Recommendations in all other respects.

Accordingly, it is ordered that the motion for summary judgment filed by Mr. Avery is denied (Dkt. No. 88). It is further ordered that the motion for summary judgment filed by defendants Mark Cashion, James Gibson, Lillie Phillips, and Larry Manning is granted in part and denied in part (Dkt. No. 90). Defendants' motion for summary judgment as to Mr. Avery's claims against them in their official capacities for monetary damages and Mr. Avery's claim for injunctive relief is granted. Mr. Avery's claims for monetary damages against defendants in their official capacities and Mr. Avery's claim for injunctive relief are dismissed with prejudice. Defendants' motion for summary judgment is denied in all other respects.

IT IS SO ORDERED this 30th day of September, 2013.



KRISTINE G. BAKER
UNITED STATES DISTRICT JUDGE