

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

**PHILLIP DEWAYNE STEWART
ADC #151956**

PLAINTIFF

v.

Case No. 5:16-cv-00129-KGB-BD

PAMELA ARMOSTER

DEFENDANT

ORDER

The Court has received a Recommended Disposition (“Recommendation”) filed by Magistrate Judge Beth Deere (Dkt. No. 14). Plaintiff Phillip DeWayne Stewart filed objections to the Recommendation (Dkt. No. 15). After careful review of the Recommendation and Mr. Stewart’s timely objections, as well as a *de novo* review of the record, the Court concludes that the Recommendation should be, and hereby is, approved and adopted as this Court’s findings in all respects.

In his objections, Mr. Stewart contends that Magistrate Judge Deere has abused her discretion by writing to him in a closed case (Dkt. No. 15). Mr. Stewart contends that Magistrate Judge Deere closed Case Number 5:16-cv-00129, the case before this Court, on June 6, 2016, and replaced it with Case Number 5:16-cv-0052. Mr. Stewart contends that Case Number 5:16-cv-0052 is currently pending before the United States Court of Appeals for the Eighth Circuit and, therefore, is not within Magistrate Judge Deere’s jurisdiction. The record does not support Mr. Stewart’s contention.

The Court has reviewed the docket in both Case Number 5:16-cv-00129 and Case Number 5:16-cv-0052. There is no evidence that Case Number 5:16-cv-00129 was closed and replaced with Case Number 5:16-cv-0052. In fact, Case Number 5:16-cv-0052 was opened on February 22, 2016, when Mr. Stewart filed his complaint (*Stewart v. Armoster*, No. 5:16-cv-

0052-BRW (E.D. Ark.)). Case Number 5:16-cv-00129 was not opened until almost four months later, on April 27, 2016 (Dkt. No. 1). There are no orders, in either case, consolidating 5:16-cv-00129 and 5:16-cv-0052. Case Number 5:16-cv-00129 has no order dated or filed marked June 6, 2016. Case Number 5:16-cv-0052 has one order filed on June 6, 2016 (Dkt. No. 15). In that order, Magistrate Judge Beth Deere revoked Mr. Stewart's *in forma pauperis status*. There is no mention of Case Number 5:16-cv-00129 in that order, and the order did not serve to close either case.

Mr. Stewart's claims are dismissed without prejudice, based on his failure to comply with the Court's August 29, 2016, order.

It is so ordered this 6th day of December, 2016.



KRISTINE G. BAKER
UNITED STATES DISTRICT COURT JUDGE