

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

**SYLVESTER O. BARBEE,  
ADC #131311**

**PLAINTIFF**

**v.**

**Case No. 5:18-cv-00113-KGB-JTK**

**JASON BOYD, et al.**

**DEFENDANT**

**ORDER**

The Court has received the Proposed Findings and Recommendations submitted by United States Magistrate Judge Jerome Kearney (Dkt. No. 94). Plaintiff Sylvester O. Barbee filed an objection to the Proposed Findings and Recommendations (Dkt. No. 96). After a review of the Proposed Findings and Recommendations and Mr. Barbee's objections, as well as a *de novo* review of the record, the Court adopts the Proposed Findings and Recommendations in their entirety as this Court's findings in all respects (Dkt. No. 94). Mr. Barbee's motions for status are denied as moot (Dkt. Nos. 98, 99).

In his objection, Mr. Barbee claims in part that, "Judge Kearney has been bias on his judgments against the plaintiff throughout the whole process." (Dkt. No. 96, at 2-3). A judge is presumed to be impartial, and a party challenging that impartiality bears the substantial burden of proving otherwise. *Pope v. Federal Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992). Mr. Barbee sets forth no facts to support this claim, and the Court does not find any evidence to suggest that Judge Kearney was biased in this case. The remainder of Mr. Barbee's objections restate claims that he raised in previous filings, which Judge Kearney properly addressed in the Proposed Findings and Recommendations (Dkt. No. 94). For these reasons, the Court adopts the Proposed Findings and Recommendations as its findings in all respects.

It is therefore ordered that.

1. Defendants' motion for summary judgment is granted (Dkt. No. 81);
2. Mr. Barbee's cross motion for summary judgment is denied (Dkt. No. 92);
3. Mr. Barbee's claims against separate defendant Angelika Smarjesse are dismissed

without prejudice for failure to exhaust;

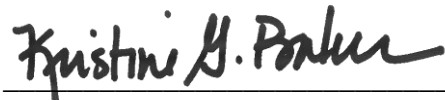
4. Mr. Barbee's claims against separate defendant Jason Boyd are dismissed with prejudice;

5. Mr. Barbee's claims against all Doe defendants are dismissed without prejudice;

and

6. Mr. Barbee's motions for status are denied as moot (Dkt. Nos. 98, 99).

It is so ordered this 30th day of December, 2019.



---

Kristine G. Baker  
United States District Judge