

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

ODELL BURNELL

PLAINTIFF

v. Civil No. 1:08-cv-01022

COLUMBIA COUNTY;
CALVIN KNIGHT, Sheriff,
Columbia County, JANET
DELANEY, Supervisor,
Columbia County Detention
Center; and WILLIS ROBERSON,
Supervisor, Columbia County
Detention Center

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff, Odell Burnell (hereinafter Burnell), filed this civil rights action pursuant to 42 U.S.C. § 1983 on April 11, 2008. He proceeds *pro se* and *in forma pauperis*. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3)(2007), the Honorable Harry F. Barnes, United States District Judge, referred this case to the undersigned for the purpose of making a report and recommendation.

At the time Burnell filed this case, he was incarcerated at the East Arkansas Regional Unit of the Arkansas Department of Correction. On December 12, 2008, Defendants filed a motion to dismiss (Doc. 30). In the affidavit of attempted service (Doc. 32), Defendants indicate they have been unable to serve Burnell with their summary judgment motion, brief, and statement of indisputable material facts. They indicate they have verified that Burnell is no longer incarcerated in the Arkansas Department of Correction (ADC) by utilizing the inmate search feature of the ADC website. They ask that the case be dismissed because of Burnell's failure to keep the court and opposing counsel informed of his address.

To date, Burnell has not responded to the motion to dismiss. Burnell's time to respond to the motion has expired. Burnell has not sought an extension of time to respond to the motion and has not communicated with the court in anyway.

As Defendants' correctly point out, the inmate search feature of the website maintained by the ADC indicates no matches under Burnell's name. No matches means Burnell is no longer incarcerated in the ADC. Burnell has not provided the court with a new address or contacted the court since his release from the ADC. Burnell was advised when he filed this case that he had an obligation to keep the court informed of his current address.

I therefore recommend that this case be dismissed without prejudice based on Burnell's failure to prosecute this action and his failure to keep the court and opposing counsel informed of his current address. Fed. R. Civ. P. 41(b); Rule 5.5(c) of the Local Rules for the Eastern and Western Districts of Arkansas. I recommend that Defendants' motion to dismiss (Doc. 30) be granted.

The parties have ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 12th day of May 2009.

/s/ Barry A. Bryant
BARRY A. BRYANT
UNITED STATES MAGISTRATE JUDGE