

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

RODNEY DANIELS

PLAINTIFF

v.

Civil No.1:09-cv-01002

ROY DeLASSUSS

DEFENDANT

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff, Rodney Daniels, filed this action pursuant to the provisions of 42 U.S.C. § 1983. 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.

The case was initially filed in the Eastern District of Arkansas and then transferred to this district. At the time he filed the complaint, Plaintiff was incarcerated in the Bradley County Jail. With his complaint, Plaintiff submitted an application for leave to proceed *in forma pauperis* (IFP)(Doc. 1). However, he failed to submit with his application a certification regarding inmate funds held in his name. For this reason, the IFP application was not complete.

An order was entered (Doc. 8) directing the clerk to mail the Plaintiff a blank IFP application. Plaintiff was given until April 30, 2009, to either complete, sign, and return the application including having the certificate portion of the IFP application completed by the appropriate detention center official or pay the \$350 filing fee. Plaintiff was advised that if he failed to return the completed IFP application or pay the \$350 filing fee by April 30, 2009, the complaint would become subject to summary dismissal for failure to obey an order of the court.

On April 29, 2009, a docket entry was made indicating the court's order was returned as undeliverable. On May 5, 2009, a notice of change of address was made on Plaintiff's behalf utilizing

the home address Plaintiff had provided detention center officials. The court's order was re-mailed to Plaintiff at the new address. Mail sent to this address has not been returned.

To date, the IFP application has not been returned or the filing fee paid. Plaintiff has not sought an extension of time to return the IFP application or pay the filing fee. Plaintiff has not communicated with the court in anyway.

I therefore recommend that this case be dismissed based on Plaintiff's failure to prosecute this action and his failure to obey the order of the court. Fed. R. Civ. P. 41(b).

The Plaintiff has ten days from receipt of this 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 Plaintiff is reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this day 8th of June 2009.

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