

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JAMES DAVID WHEAT

PLAINTIFF

v.

Civil No. 4:09-cv-04036

DEPUTY JONES, Miller County
Jail; CORPORAL HOGAN,
Miller County Jail; JAILER
DOUG ARNOLD, Miller
County Jail; FORMER SHERIFF
LINDA RAMBO; and FORMER
JAIL ADMINISTRATOR
JANICE NICHOLSON

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff, James David Wheat, filed this civil rights action pursuant to the provisions of 42 U.S.C. § 1983. 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.

The Court ordered service on the Defendants on June 8, 2009 (Doc. 7). When the United States Marshal Service attempted to serve Defendant Corporal Hogan (hereinafter Hogan), they were advised that he no longer worked at the Miller County Detention Center. Defendants were then directed to provide the Court with Hogan's current address (Doc. 25). When the address was received, an order directing service on Hogan was issued (Doc. 29). The return of service was returned unexecuted on November 18, 2009 (Doc. 35). A notation on the return provides as follows: "All investigative means including computer checks and field interviews have failed to locate this person."

As Hogan cannot be located to be served, I recommend that the claims against him be dismissed without prejudice.

The parties have fourteen (14) 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 parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 5th day of February 2010.

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