

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

EDDIE S. WATKINS

PLAINTIFF

v.

Civil No. 07-6066

FORMER SHERIFF CHAD LEDBETTER, *et al.*

DEFENDANTS

O R D E R

Now on this 15th day of July, 2010, comes on for consideration the **Report and Recommendation of the Magistrate Judge** (document #99) in this matter, and **Plaintiff's Objections thereto** (document #103). The Court, having carefully reviewed said Report and Recommendation as well as Plaintiff's Objections thereto, finds as follows:

1. The events that gave rise to Plaintiff's claims in this lawsuit occurred when he was incarcerated at the Hot Springs County Jail. Generally speaking, Plaintiff complains that the conditions at the Hot Springs County Jail were unsafe and unsanitary such that his Eighth Amendment rights were violated.

2. On June 17, 2009, the Magistrate Judge held an evidentiary hearing in which he heard testimony from Plaintiff as well as ten additional witnesses, including other inmates and jail employees. Plaintiff attempted to show that the conditions at the jail were unsafe and/or unsanitary in the following ways:

- * Inadequate food and/or food prepared in unsanitary conditions

- * Inadequate sanitation and/or bathroom facilities
- * Overcrowding
- * Lack of appropriate opportunities for exercise
- * Inadequate plumbing/water for showers
- * Insufficient staffing at the jail
- * No fire safety measures
- * General violation of jail standards

3. On July 29, 2009, the Magistrate Judge entered his Report and Recommendation in which he noted that the Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones. See *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The Magistrate Judge reviewed the testimony from the hearing and found that, while the conditions at the jail may not have been ideal, Plaintiff had failed to show that he was harmed or otherwise endangered by the jail's conditions. Thus, the Magistrate Judge found no Constitutional violation and recommended that Plaintiff's case be dismissed.

4. Plaintiff has filed objections to the Magistrate Judge's Report and Recommendations asserting, among other things, that:

- * the Magistrate Judge was biased,
- * that it was unfair that the Court did not appoint an attorney for him to represent him at the hearing,
- * that he was rushed at the hearing, and

* that although he did not show that he suffered actual harm, the case law does not require actual harm before a constitutional violation can be found.

The Court finds that none of Plaintiff's objections have merit and should be overruled.

First, Plaintiff has failed to state sufficient grounds to show that the Magistrate Judge was biased. His only allegation relates to the fact that the Magistrate Judge advised the parties at the hearing that he was going to dismiss the individual defendants in their official capacities and that he allowed the witnesses to stay in the courtroom during the testimony. Neither of these allegations rise to the level of showing that the Magistrate Judge was biased against Plaintiff.

Second, Plaintiff is not entitled to an appointed attorney in civil litigation. See document #36 (Order denying Plaintiff's Motion to Appoint Counsel).

Third, the Magistrate Judge's opinion in this matter is thorough and well reasoned. The Magistrate Judge recognized that unsafe and/or unsanitary conditions in a prison can constitute an Eighth Amendment violation, but that under the evidence in this case, the deprivations that Plaintiff suffered were, at best *de minimus*, and were not severe enough to constitute an Eighth Amendment violation.

The Court finds that the Magistrate Judge's Report and Recommendation is sound in all respects, and that it should be adopted *in toto*.

IT IS THEREFORE ORDERED that Plaintiff's **Objections** to the **Magistrate Judge's Report and Recommendation are overruled.**

IT IS FURTHER ORDERED that the **Magistrate Judge's Report and Recommendation is adopted *in toto*.**

IT IS FURTHER ORDERED that, for the reasons stated in the Magistrate Judge's Report and Recommendation, Plaintiff's complaint is hereby **DISMISSED** with prejudice.

IT IS SO ORDERED.

/s/Jimm Larry Hendren
HON. JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE