

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

JAMES KEN ANDERSON

PLAINTIFF

V.

CASE NO. 12-CV-6117

RAY HOBBS, Director of the
Arkansas Department of Correction,
et al.

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation (“R&R”) filed August 25, 2014, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. ECF No. 140. Judge Bryant recommends that Plaintiff’s *in forma pauperis* (“IFP”) status be revoked and his claims dismissed if he does not pay the full filing fee within ten days of this Order. Plaintiff has responded with timely objections. ECF No. 141.

The R&R details Plaintiff’s litigation history and notes that Plaintiff has accumulated more than three strikes pursuant to 28 U.S.C. § 1915(g). Plaintiff was originally granted IFP status based on his allegations that he was in imminent danger of physical harm. Judge Bryant now recommends that Plaintiff’s IFP status be revoked because it has become clear that Plaintiff is not and never has been in imminent danger of serious physical harm. Plaintiff claims that he is in imminent danger because of certain medical conditions, including hepatitis C, metastatic cancer, MRSA bacterial infection, and a failed knee replacement surgery. Plaintiff, however, fails to specifically state what imminent physical danger he is actually in. Further, the medical records in evidence do not support Plaintiff’s claims.

In his objections, Plaintiff claims that a liver function test shows that he is in imminent danger of physical harm, but the medical record in evidence reveals that his liver functions are normal. The medical records also indicate that x-rays show no evidence of any hardware failure of his knee implant. Plaintiff further claims that in December 2013, he had knee revision surgery, but he fails to show how any knee issues place him in imminent danger of physical harm. Plaintiff also claims in his objections that he is being treated at UAMS Hospital for prostate cancer that has spread to his liver and pancreas. Plaintiff, however, fails to show that he is in imminent danger of physical harm because of the cancer. Plaintiff, in fact, seems to show that he is not in imminent danger since he is being treated for his condition with chemotherapy and radiation.

Accordingly, based on its own de novo review, the Court overrules Defendant's objections and adopts the Report and Recommendation *in toto*. ECF No. 140. Defendant's IFP status is **REVOKED**. Plaintiff shall have ten (10) days to pay the Court's filing fee of \$400. If Plaintiff fails to pay the filing fee within ten (10) days, Plaintiff's case will be dismissed with prejudice.

IT IS SO ORDERED, this 9th day of September, 2014.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge