

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KATHALINA MONACELLI,

Plaintiff,

vs.

Case No. 2:09-cv-12-FtM-29SPC

CRACKER BARREL; GENERAL MANAGER JOE
HOLDER,

Defendant.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #9), filed March 20, 2009, recommending that plaintiff's Affidavit of Indigency (Doc. #2), construed as a motion to proceed *in forma pauperis*, be denied and the case be dismissed. Plaintiff filed Objections (doc. #10) on March 27, 2009.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. v. State

Bd. of Educ., 896 F.2d 507, 512 (11th Cir. 1990) (quoting H.R. 1609, 94th Cong. § 2 (1976)). Even in the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994) (Table).

After conducting an independent examination of the file, the Court notes that plaintiff was provided an opportunity to amend the complaint to properly state a claim. (Doc. #4.) Plaintiff did not amend the complaint and a Report and Recommendation was issued to deny *in forma pauperis* status for failure to state a claim. Upon review, the Court accepts the Report and Recommendation of the magistrate judge and overrules the objections.

Accordingly, it is now


ORDERED:

1. The Report and Recommendation is hereby **adopted** and the findings incorporated herein.

2. Plaintiff's Affidavit of Indigency (Doc. #2), construed as a motion to proceed *in forma pauperis*, is **DENIED**.

3. The Clerk shall enter judgment dismissing the case without prejudice for failure to state a claim, terminate all deadlines, and close the file.

DONE AND ORDERED at Fort Myers, Florida, this 13th day of April, 2009.



JOHN E. STEELE
United States District Judge

Copies:
Hon. Sheri Polster Chappell
United States Magistrate Judge

Plaintiff