

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ADRIAN DAVIS,

Plaintiff,

vs.

Case No. 2:10-cv-107-FtM-29SPC

COLLIER COUNTY SHERIFF'S OFFICE;
DEPUTY VENTURA #3247,

Defendant.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #9), filed April 5, 2010, recommending that the Affidavit of Indigency (Doc. #20), construed as a motion to proceed *in forma pauperis*, be denied, the Complaint (Doc. #1) be dismissed without prejudice with leave to amend, and plaintiff be permitted 21 days to file the amended complaint. No objections have been filed and the time to do so has expired.

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). 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. Co., 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 and upon due consideration of the Report and Recommendation, the Court accepts the Report and Recommendation of the magistrate judge to the extent that the Complaint will be dismissed without prejudice to filing an Amended Complaint in compliance with the Report and Recommendation's guidelines (Doc. #9, pp. 7-8). The motion to proceed *in forma pauperis* will however be taken under advisement pending the submission of the Amended Complaint.

The Court notes that plaintiff has filed a Motion to Consolidate (Doc. #4). In light of the dismissal of the Complaint, the motion will be denied. Additionally, consolidation would not be proper. One case has been dismissed, 2:10-cv-143-FTM-29SPC, and the other case is pending before another district judge, 2:10-cv-144-FTM-36SPC.

Accordingly, it is now

ORDERED:

1. The Report and Recommendation (Doc. #9) is hereby **adopted in part and modified in part.**


2. Plaintiff's Affidavit of Indigency (Doc. #20), construed as a motion to proceed *in forma pauperis*, is **taken under advisement** pending review of an "Amended Complaint."

3. The Complaint (Doc. #1) is **dismissed** without prejudice to filing an Amended Complaint in compliance with the Report and Recommendation's guidelines (Doc. #9, pp. 7-8) within **TWENTY-ONE (21) DAYS** of this Opinion and Order.

4. **The failure to file an "Amended Complaint" within the time provided will result in the entry of judgment dismissing the case without prejudice and the closure of the case.**

5. The Motion to Consolidate (Doc. #4) is **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this 27th day of April, 2010.



JOHN E. STEELE
United States District Judge

Copies:
Hon. Sheri Polster Chappell
United States Magistrate Judge

Plaintiff