

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

KEVIN DONALD GARDNER,

Plaintiff,

vs.

CASE NO. 8:09-CIV-1994-T-17-TGW

ROBERT HASTINGS, et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause is before the Court on the report and recommendation (R&R) issued by Magistrate Judge Thomas G. Wilson on October 6, 2009 (Docket No. 4). The magistrate judge recommended that the Court dismiss the complaint with leave to amend and that the motion to proceed in forma pauperis be deferred pending the filing of a complaint that survives scrutiny.

Pursuant to Rule 6.02, Rules of the United States District Court for the Middle District of Florida, the parties had ten (10) days after service to file written objections to the proposed findings and recommendations, or be barred from attacking the factual findings on appeal. Nettles v. Wainwright, 677 F.2d 404 (5th Cir. 1982) (en banc). No objections were filed to the report and recommendation.

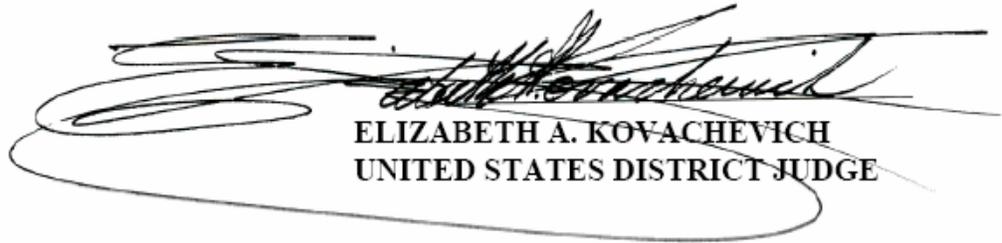
STANDARD OF REVIEW

When a party makes a timely and specific objection to a finding of fact in the report and recommendation, the district court should make a de novo review of the record with respect to that factual issue. 28 U.S.C. § 636(b)(1); U.S. v. Raddatz, 447 U.S. 667 (1980); Jeffrey S. v. State Board of Education of State of Georgia, 896 f.2d 507 (11th Cir. 1990). However, when no timely and specific objections are filed, case law indicates that the court should review the findings using a clearly erroneous standard. Gropp v. United Airlines, Inc., 817 F.Supp. 1558, 1562 (M.D. Fla. 1993).

The Court has reviewed the report and recommendation and made an independent review of the record. Upon due consideration, the Court concurs with the report and recommendation. Accordingly, it is

ORDERED that the report and recommendation, October 6, 2009 (Docket No. 4) be **adopted and incorporated by reference**; the Court **dismisses** the complaint as it fails to state a cause of action upon which relief could be granted; the plaintiff has up to and including November 16, 2009, to file an amended complaint; the assigned magistrate judge shall review the amended complaint to determine if it should go forward and if it is to go forward, the magistrate judge shall consider and rule on the motion to proceed in forma pauperis. If the plaintiff fails to file a timely amended complaint the case will be dismissed without further notice.

DONE and ORDERED in Chambers, in Tampa, Florida, this 30th day of October,
2009.



ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies to:
All parties and counsel of record
Assigned Magistrate Judge