

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

VICTOR CHARLES ZERBY,
Plaintiff,

vs.

CASE NO.: 3:09cv284/LAC/MD

WALTER A. MCNEIL, et al.,
Defendants.

ORDER

This cause comes on for consideration upon the magistrate judge's report and recommendation dated November, 2, 2010. The plaintiff has been furnished a copy of the report and recommendation and has been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). No objections have been filed.

Having considered the report and recommendation, I have determined that the report and recommendation should be adopted.

Accordingly, it is now ORDERED as follows:

1. The magistrate judge's report and recommendation is adopted and incorporated by reference in this order.
2. The plaintiff's claims for injunctive relief against defendants Ellis and Smith are DISMISSED as moot.
3. The plaintiff's remaining claims for punitive damages against defendants Ellis and Smith are DISMISSED WITHOUT PREJUDICE under 28 U.S.C. § 1915(e)(2)(B)(ii).
4. In the alternative to the above, plaintiff's claims against defendants Ellis and Smith are DISMISSED WITHOUT PREJUDICE for failure to comply with an order of the court.

5. Judgment is entered in accordance with the order adopting this Second Report and Recommendation, and in accordance with the court's July 6, 2010 order (doc. 50) adopting the magistrate's first Report and Recommendation.
6. All pending motions are DENIED as moot.
7. The clerk is directed to close the file.

DONE AND ORDERED this 3rd day of December, 2010.

s/L.A. Collier

LACEY A. COLLIER
SENIOR UNITED STATES DISTRICT JUDGE