

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

HARRIS E. GILLEY,

Plaintiff,

v.

CASE NO. 4:06cv505-RH/WCS

SHANTA BUTLER, et al.,

Defendants.

_____ /

**ORDER VACATING JUDGMENT AND REMANDING TO
MAGISTRATE JUDGE FOR FURTHER PROCEEDINGS**

This matter is before the court on the magistrate judge's second report and recommendation (document 24), to which no objections have been filed. Upon consideration,

IT IS ORDERED:

The second report and recommendation is ACCEPTED and adopted as the opinion of the court. Plaintiff's amended complaint (document 21) is accepted and simultaneously construed as a Rule 60(b)(5) motion for relief from judgment. The order docketed April 26, 2007 (document 17) and judgment docketed April 26, 2007 (document 18) are VACATED. The case is hereby remanded to the

magistrate judge for further proceedings.¹

SO ORDERED this 24th day of June, 2007.

s/Robert L. Hinkle _____
Chief United States District Judge

¹ If it were deemed improper to vacate the judgment, I would treat the amended complaint as a complaint commencing a new action. Aside from the assignment of a new case number, the practical effect would be the same. The original judgment that is being vacated by the instant order was not an adjudication on the merits and, in light of the intervening development of the circuit law, would not foreclose the filing of a new action.