

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

HARRY LEE DONALDSON,

Plaintiff,

vs.

CASE NO. 5:07cv261-SPM/MD

JACKSON COUNTY SHERIFF'S
DEPARTMENT, et al.,

Defendant.

_____ /

ORDER DISMISSING CASE WITHOUT PREJUDICE

This cause comes before the Court on the Magistrate Judge's report and recommendation (doc. 7) dated January 8, 2008. Plaintiff has been furnished a copy and given an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). Although Plaintiff filed an objection (doc. 10) he does not challenge the Magistrate Judge's conclusion that his complaint fails to state a claim on which relief may be granted. Instead, Plaintiff asks for 180 days' leave so that after he is released from prison he can file an amended complaint correcting the defects.

The amount of time Plaintiff requests is extraordinarily long and would require an extension of time for service of process under Federal Rule of Civil Procedure 4(m). The amount of time also runs counter to Northern District of Florida Local

Rule 41.1(A), which subjects a case to dismissal for failure to prosecute if it remains inactive for more than 90 days. As grounds for requesting extended leave, Plaintiff relies on the fact that he is incarcerated. Incarceration, however, is not ordinarily an impediment to litigation and would not justify keeping this case in abeyance for 180 days.

The Court notes that Plaintiff has not previously amended his complaint, so his request to amend is reasonable and would be granted but for the amount of time he is requesting. Although the complaint, as it now stands, fails to state a claim on which relief may be granted, if amended it may be possible for Plaintiff to state valid claims at least as to some defendants. Given the circumstances, the Court finds that the most appropriate course of action is to dismiss this case for failure to state a claim on which relief may be granted, but clarify that the dismissal is without prejudice. Accordingly, it is

ORDERED AND ADJUDGED:

1. The report and recommendation (doc. 10) is adopted and incorporated into this order.
2. This case is dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted. The dismissal is without prejudice to Plaintiff's opportunity to correct his complaint to file in a new case.

DONE AND ORDERED this 8th day of February, 2008.

s/ Stephan P. Mickle

Stephan P. Mickle
United States District Judge