

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

RODNEY G. SHEPARD,

Plaintiff

VS.

REBECCA WILLIAMS, *et al.*,

Defendants

NO. 3:08-CV-32 (CDL)

**PROCEEDINGS UNDER 42 U.S.C. §1983
BEFORE THE U. S. MAGISTRATE JUDGE**

ORDER AND RECOMMENDATION

Before the court is a motion seeking summary judgment filed plaintiff Rodney G. Shepard. Tab #83. The motion is supported by a memorandum, an affidavit, and several exhibits. The motion does not, however, contain a separate and concise statement of material facts as is required by Local Rule 56 governing the filing of motions seeking summary judgment in this court. *See* U.S. Dist.Ct.Rules.M.D.Ga., Civ Rule 56. In addition, it appears that this motion was not timely filed pursuant to the undersigned's previous Recommendation (Tab #8) which was entered on May 12, 2008 and adopted by U. S. District Judge Land on July 15, 2008 (Tab #34), wherein the deadline for filing dispositive motions was set for thirty (30) days after the close of discovery. In this case, the time for filing dispositive motions ended on December 8, 2008. As the instant motion was not filed on or before that date, it is clearly untimely.¹

Finally, and in light of the fact that the undersigned has this date entered a Recommendation to grant the defendants' *timely filed* motions seeking summary judgment, IT IS RECOMMENDED that plaintiff's motion seeking summary judgment be **DENIED**. Pursuant to 28 U.S.C. §636(b)(1), the parties may serve and file written objections to this RECOMMENDATION with the district judge to whom this case is assigned **WITHIN TEN (10) DAYS** after being served with a copy thereof.

¹The plaintiff's motion was signed and dated February 5, 2009, and marked filed in the clerk's office on February 11, 2009.

Also before the court is a motion entitled "Motion for Consideration" (Tab #87) and one entitled "Motion to Amend Memorandum in Support" (Tab #88). Both motions were filed by plaintiff Shepard. In his motion seeking consideration, Shepard asks that the court accept and consider his Motion for Summary Judgment as timely filed. In support of this request, Shepard claims that he did file the motion before the December 8, 2008 deadline and that the reason it was not timely received by the court is because, unbeknownst to him, the Calhoun State Prison mail room staff was not mailing out Shepard's legal mail because it required more than five postage stamps. Even if the undersigned were to accept plaintiff's assertion, his motion would still be deficient in that no statement of undisputed facts was attached thereto. Accordingly plaintiff Shepard's motion for consideration is **DENIED**.

In his motion seeking to amend his memorandum in support of his motion seeking summary judgment, plaintiff Shepard seeks to add documentary evidence in the form of approximately one-hundred (100) pages of exhibits. These exhibits consist largely of medical records which have already been submitted in the record and which have been considered by the court. For this reason, as well as for the reasons set forth above, plaintiff's motion seeking to amend should be and is **DENIED**.

SO ORDERED AND DIRECTED, this 4th day of AUGUST, 2009.



A handwritten signature in black ink that reads "Claude W. Hicks, Jr." The signature is fluid and cursive, with "Claude" and "W." being more stylized and "Hicks, Jr." being more legible.

CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE