

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

TYRONE THURMAN, :
Plaintiff :
VS. :
DAN JORDAN, Clerk of the :
Superior Court of Jasper County, :
Defendant :
:

NO. 5:10-CV-22 (CAR)
PROCEEDINGS UNDER 42 U.S.C. §1983
BEFORE THE U. S. MAGISTRATE JUDGE

O R D E R

On February 23, 2010, the undersigned recommended that plaintiff's request that this Court order the defendant, Clerk of Jasper County Superior Court Dan Jordan, to produce the transcripts and records of his criminal trial, which the undersigned construed as a request for mandamus relief, be dismissed. Plaintiff's claim for damages was permitted to go forward.

In *English v. Laidler*, Civil Action No. 5:09-CV-245 (CAR), the Honorable C. Ashley Royal, Chief U. S. District Judge, rejected the recommendation of the undersigned in a case presenting similar facts. Judge Royal found that the plaintiff's request in *English* was more in the nature of an injunction rather than mandamus and stated that plaintiff's claim for injunctive relief could not be "dismissed as frivolous on initial review."

In light of Judge Royal's order in *English* and the uncertainty surrounding this issue (compare *Bailey v. Silberman*, 226 Fed. App'x 922 (11th Cir. Apr. 2, 2007) and *Moye v. Clerk, DeKalb County Superior Court*, 474 F.2d 1275, 1275-76 (5th Cir. 1973) with *Carter v. Hardy*, 526 F.3d 314, 315 (5th Cir. 1976), the undersigned hereby VACATES that portion of the ORDER AND RECOMMENDATION (Tab #7) constituting the recommendation to dismiss plaintiff's injunctive/mandamus claim. Such claim will be allowed to proceed and the defendant can address the issue in a dispositive motion.

SO ORDERED, this 14th day of JUNE, 2010.



CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE TO ALL PARTIES

PURSUANT TO THE COURT'S ORDER REGARDING DISCOVERY SET OUT ABOVE, NO DISCOVERY SHALL BE PERMITTED IN THIS CASE UNTIL AN ANSWER OR DISPOSITIVE MOTION (e.g., MOTION TO DISMISS, MOTION FOR SUMMARY JUDGMENT, MOTION FOR JUDGMENT ON THE PLEADINGS) HAS BEEN FILED BY THE DEFENDANT.

PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE, DISCOVERY (DEPOSITIONS, INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, REQUESTS FOR ADMISSIONS, ETC., AND RESPONSES THERETO) SHALL NOT BE FILED WITH THE CLERK OF COURT. NOTE THAT THIS IS A CHANGE IN THE PROCEDURE HERETOFORE FOLLOWED IN THIS DISTRICT.

DO NOT FILE ANY DISCOVERY WITH THE COURT UNLESS YOU ARE SPECIFICALLY DIRECTED TO DO SO BY THE COURT OR UNLESS FILING IS NECESSARY TO SUPPORT OR CONTEST A MOTION TO COMPEL DISCOVERY, OBJECTION TO DISCOVERY, DISPOSITIVE MOTION, OR SIMILAR MOTION. THE CLERK IS DIRECTED TO RETURN ANY SUBMITTED DISCOVERY TO THE PARTY SUBMITTING IT UNLESS IT IS FILED PURSUANT TO AN ORDER OF THE COURT OR IN SUPPORT OF A MOTION TO COMPEL, OBJECTION TO DISCOVERY, DISPOSITIVE MOTION, OR SIMILAR MOTION.