Brant v. Barrow, et al

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## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA VALDOSTA DIVISION

WILLIAM BRANT, :

Plaintiff, :

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v. : Civil Action No.

7:04-CV-41 (HL)

LAVERN FRY, et al., :

:

Defendants. :

:

:

## **ORDER**

On August 23, 2006, the Court issued an Order accepting a Report and Recommendation (Doc. 27), which recommended granting a Motion for Summary Judgment (Doc.23) filed by Defendants Fry and Mapp, and an Order accepting a Report and Recommendation (Doc. 28), which recommended dismissing Defendant Okori due to lack of service. At the time the Court considered these Recommendations, no objections from Plaintiff had been received or filed. Plaintiff's Objection to Magistrate's Recommendation (Doc. 32) was subsequently received by the clerk on August 28, 2006.

Pursuant to the Prisoner Mailbox Rule, originally established in <u>Houston v. Lack</u>, 487 U.S. 266, 270-75, 108 S.Ct. 2379, 2382-85 (1988), a prisoner's filings are deemed filed on the date that the prisoner delivers the filing to prison authorities for mailing. <u>Id.</u> In the absence of evidence to the contrary in the form of prison logs or other records, the date on which a prisoner signed the filing will control. <u>Washington v. United States</u>, 243 F.3d 1299, 1301 (11th Cir. 2001). Here, Plaintiff signed his Objection on August 10, 2006. As there has been no evidence to the contrary

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submitted, the Court must assume that Plaintiff delivered his Objection to prison authorities on

August 10, 2006. As such, Plaintiff's Objection was timely filed and should be considered by the

Court before accepting either Report and Recommendation. Accordingly, both Orders filed on

August 23, 2006 (Docs. 29 and 30) and the judgment filed on August 24, 2006 (Doc. 31) are

vacated.

**SO ORDERED**, this the 29th day of August, 2006.

/s/ Hugh Lawson

**HUGH LAWSON, Judge** 

scs