

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FREDERICK BANKS,

Plaintiff,

v.

1:15-cv-2065-WSD

TIMOTHY PIVNICHNY, et al.,

Defendants.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Walter E. Johnson’s Final Report and Recommendation [3] (“R&R”). The Magistrate Judge recommended that this action be dismissed without prejudice for Plaintiff Frederick Banks’ (“Plaintiff”) failure to comply with the Magistrate Judge’s June 12, 2015, Order.

I. BACKGROUND

On June 8, 2015, Plaintiff filed his Application for Leave to Proceed *In Forma Pauperis* [1] (“Application”). Plaintiff, in response to the application’s question about his assets, stated he had “various investments nothing major.” (Application at 2).

On June 12, 2015, the Magistrate Judge noted that Plaintiff’s statement

about his investments was too vague to determine his financial status, and ordered Plaintiff to pay the filing fee or submit a completed application to proceed *in forma pauperis*. (June 12, 2015, Order, [2] at 1). The Magistrate Judge admonished Plaintiff that his failure to comply with the June 12, 2015, Order, would result in a recommendation that the case be dismissed. Plaintiff did not pay the filing fee or file a completed application to proceed *in forma pauperis*.

On July 13, 2015, the Magistrate Judge recommended that the Court deny Plaintiff's Application without prejudice for Plaintiff's failure to comply with the Magistrate Judge's June 12, 2015, Order. (R&R at 1-2). Plaintiff did not file any objections to the R&R.

II. DISCUSSION

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). With respect to those findings and

recommendations to which objections have not been asserted, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984). Plaintiff did not object to the R&R and the Court thus reviews it for plain error.

B. Analysis

The Magistrate Judge found that Plaintiff failed to comply with the June 12, 2015, Order, and recommended that the Court dismiss Plaintiff's Application. The Court finds no plain error in the Magistrate Judge's findings and recommendation. See Slay, 714 F.2d at 1095. Plaintiff's failure to comply with the Magistrate Judge's June 12, 2015, Order, warrants the denial of Plaintiff's application and the dismissal of Plaintiff's case without prejudice. See LR 41.3(A)(2), NDGa.

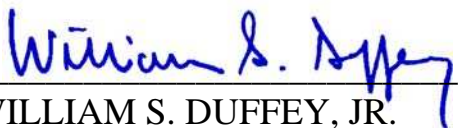
III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Walter E. Johnson's Final Report and Recommendation [3] is **ADOPTED** and Plaintiff Frederick Banks' Application for Leave to Proceed *In Forma Pauperis* [1] is **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that this action is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED this 7th day of October, 2015.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE