

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JEFFREY BAKER,

Plaintiff,

v.

ROBERT HERTZ, JOHN LAKIN, GARY BOST,
DONALD BUNT, ROBERT HOLLENBACH,
RANDY YOUNG, LT. HILL, MIRAN
THOMPSON, SGT. DOVER, JODIE COLLMAN,
PAUL SARHAGE, STEVE RIDINGS, DONALD
McNAUGHTON, KENT GRIFFITH, TIM
WALKER, CRAIG RICHERT, MIKE TASSOME,
MIKE HARE, OFCR. MARK SPURGEON, BLAKE
SELLERS, MARK RYAN, MATT MILLER,
ROBERT BLANKENSHIP, MARTHA MAJOR,
ALICIA RUSHING, and VALERIE BASSETS,

Defendants.

Case No. 15-cv-600-JPG-DGW

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation (“Report”) (Doc. 111) of Magistrate Judge Donald G. Wilkerson recommending that the Court strike the reply brief (Doc. 91) and grant in part and deny in part the motion for summary judgment on Counts 4 and 9 filed by defendant Robert Hertz (Doc. 74).

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Court has received no objection to the Report. The Court has reviewed the entire file

and notes only one minor error. Magistrate Judge Wilkerson stated that Hertz, whom Baker is suing in Count 4 for injunctive relief in his official capacity as the Sheriff of Madison County, is really a claim against the municipality of Madison County. In reality, under Illinois law a sheriff is an independently elected constitutional officer, not an agent of the county in which he was elected. Ill. Const. art. VII, § 4(c); *Moy v. County of Cook*, 640 N.E.2d 926, 931 (Ill. 1994). Nevertheless, Magistrate Judge Wilkerson's conclusion is correct that Hertz currently lacks the capacity to provide injunctive relief under Count 4 because he is no longer sheriff. Except for this minor error, the Report is not clearly erroneous. Accordingly, the Court hereby:

- **ADOPTS** the Report as **MODIFIED** to correct the lone error (Doc. 111);
- **STRIKES** Hertz's reply brief (Doc. 91);
- **GRANTS in part** and **DENIES in part** Hertz's motion for summary judgment (Doc. 74). The motion is **GRANTED** to the extent it seeks summary judgment against Hertz on Count 4. The motion is **DENIED** in all other respects;
- **DISMISSES** Count 4 against Hertz **without prejudice**; and
- **DIRECTS** the Clerk of Court to enter judgment accordingly at the close of the case.

IT IS SO ORDERED.

DATED: January 11, 2017

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE