

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

DANIEL J. SCOTT,
Plaintiff,

vs.

MARY BENSON, ARNP, et al.,
Defendants.

No. 11-CV-4055-DEO

ORDER ACCEPTING REPORT
AND RECOMMENDATION
(Docket No. 33)

I. INTRODUCTION AND BACKGROUND

The plaintiff filed a motion for preliminary injunction (Docket No. 20), and a hearing was held before Chief Magistrate Judge Paul A. Zoss. Following the hearing on March 19, 2012, Judge Zoss issued a Report and Recommendation ("R&R") (Docket No. 33) that allowed for parties' objections to be filed in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), within fourteen days of the service of the R&R. No objections are before this Court.

The background as set out in the R&R will not be repeated here, but the same is referenced as if fully set out herein.

The Report and Recommendation (Docket No. 33), provides the legal standard for determining whether a preliminary injunction is appropriate and sets out each of the pertinent factors in turn: (1) likelihood of success on the merits; (2)

irreparable harm to the plaintiff; (3) balance of equities; and (4) public interest.¹

After a thorough analysis, the R&R concludes that the Dataphase/Winter factors outlined in the R&R weigh against issuing a preliminary injunction; and it is recommended the plaintiff's motion for preliminary injunction be denied.

II. ANALYSIS

A. Standard of Review

Pursuant to statute, this Court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's

¹The R&R referenced *Dataphase/Winter* factors: Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008)(citing Munaf v. Geren, 553 U.S. 674, 689-90 (2008)), and Dataphase Sys., Inc., v. C L Sys., Inc., 640 F.2d 109, 114 (8th Cir. 1981).

Report and Recommendation on dispositive motions and prisoner petitions, where objections are made as follows:

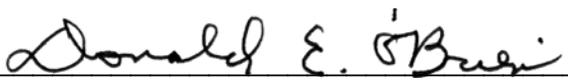
The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

As mentioned, no objections to the Report and Recommendation have been filed; and it appears to the Court upon review of Chief Magistrate Judge Zoss's findings and conclusions that there are no grounds to reject or modify them.

IT IS THEREFORE HEREBY ORDERED that this Court accepts Chief Magistrate Judge Zoss's Report and Recommendation (Docket No. 33). The plaintiff's motion for preliminary injunction (Docket No. 20) is hereby **denied**.

IT IS SO ORDERED this 30th day of April, 2012.



Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa