

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

CLENANT NICKLES

CIVIL ACTION

VERSUS

BURL CAIN, ET AL.

NO.: 14-00260-BAJ-EWD

RULING AND ORDER

Before the Court is **Defendants' Motion for Summary Judgment (Doc. 33)**, filed by Defendants Charles Westbrook and Daniel Davis. Defendants seek an order of the Court granting summary judgment in their favor on all of Plaintiff's claims asserted against them. Specifically, Defendants assert that Plaintiff's claims were prescribed prior to his properly filing those claims in this Court.

The Magistrate Judge issued a Report and Recommendation, recommending that Defendants' Motion for Summary Judgment be denied and finding that (1) the Plaintiff made a timely attempt to submit his Complaint to the Court on October 21, 2013, and that (2) although Defendants claim that the Complaint was returned to Plaintiff due to his failure to comply with prison procedures that forbid a Complaint from being bound with staples, there is a genuine issue of material fact regarding the issue of whether Plaintiff was apprised of the relevant procedure. (*See* Doc. 42).

Defendants timely filed objections to the findings of the Report and Recommendation. (See Doc. 43). Defendants object to (1) their inability to file a reply memorandum in relation to their Motion for Summary Judgment due to the Court's interpretation of a pleading filed by Plaintiff as a memorandum in opposition to Defendants' Motion for Summary Judgment;<sup>1</sup> (2) the Magistrate Judge's finding that Plaintiff made a timely attempt to submit his Complaint to the Court on October 21, 2013; and (3) the Magistrate Judge's finding that Plaintiff was not adequately apprised of the prison procedures that forbid a Complaint from being bound with staples. The Court notes that parties do not have a *right* to file reply memoranda; "[r]eply memoranda . . . may only be filed by leave of court." M.D. La. LR 7(f). Additionally, "genuine issue[s] for trial" preclude summary judgment in relation to Defendants' second and third objections. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

Having carefully considered Defendants' Motion, Plaintiff's memorandum in opposition, the Magistrate Judge's Report, and Defendants' objections, the Court **APPROVES** the Magistrate Judge's **Report and Recommendation (Doc. 42)**, and **ADOPTS** the Report as the Court's opinion herein.

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<sup>1</sup> Plaintiff's pleading, entitled Plaintiff's Objections to the Magistrate Judge's Report and Recommendation (Doc. 41), is construed by the Court as a memorandum in opposition to Defendants' Motion for Summary Judgment. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

For reasons explained in the Magistrate Judge's Report,

**IT IS ORDERED** that **Defendants' Motion for Summary Judgment (Doc. 33)** is **DENIED**.

**IT IS FURTHER ORDERED** that this matter is **REFERRED** to the Magistrate Judge for further proceedings.

Baton Rouge, Louisiana, this 2<sup>nd</sup> day of February, 2017.



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**BRIAN A. JACKSON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**