

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

EARTON LYNN SMITH

CIVIL ACTION NO. 10-1070

VERSUS

JUDGE S. MAURICE HICKS, JR.

KEVIN HUMPHREY, ET AL

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Before the Court is Plaintiff Earton Lynn Smith's Appeal of Magistrate Decision, (Record Document 41) wherein Magistrate Judge Hornsby denied the Plaintiff's motion for sanctions. (Record Document 33).

Magistrate Judge Hornsby's September 22, 2011 Memorandum Order (Record Document 33) was a non-dispositive matter. The action taken in such order is not listed in 28 U.S.C. § 636(b)(1)(A) as one of the dispositive motions (often referred to as the "excepted motions") that a magistrate judge may not conclusively decide. Magistrate Judge Hornsby's order was not a recommendation to the district court; rather, it was an order from the magistrate judge on a non-dispositive matter that requires the district court to uphold the ruling unless it is clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A); see also Castillo v. Frank, 70 F.3d 382, 385 (5th Cir. 1995) & Perales v. Casillas, 950 F.2d 1066, 1070 (5th Cir.1992). This Court will review Magistrate Judge Hornsby's legal conclusions *de novo*, and will review his factual findings for clear error. See Choate v. State Farm Lloyds, No. 03-CV-2111, 2005 WL 1109432, *1 (N.D.Tex. May 5, 2005).

This Court has reviewed the record, including Plaintiff's appeal (Record Document 41), and concludes that Magistrate Judge Hornsby's order of September 22, 2011 (Record

Document 33) was neither clearly erroneous nor contrary to law.

Accordingly,

IT IS ORDERED that Plaintiff Earlon Lynn Smith's Appeal of Magistrate Decision, (Record Document 41) be and hereby is **DISMISSED**.

IT IS FURTHER ORDERED that the Magistrate Judge's order of September 22, 2011 (Record Document 33) be and is hereby **AFFIRMED** in all respects.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 15th day of November, 2011.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE