

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

JAMES ARTHUR SHARKEY

PLAINTIFF

V.

NO. 4:18-CV-17-DMB-JMV

**HUMPHREYS COUNTY, MISSISSIPPI,
et al.**

DEFENDANTS

ORDER

Before the Court in this civil rights action is the Report and Recommendation of United States Magistrate Judge Jane M. Virden, which recommends that the Court deny the pending motion to dismiss of Humphreys County, J.D. Roseman, and Sean Williams. Doc. #21.

I
Procedural History

On February 9, 2018, James Arthur Sharkey, with the assistance of counsel, filed a complaint in this Court against (1) Humphreys County, Mississippi; (2) J.D. Roseman, in his individual capacity and official capacity as sheriff of Humphreys County; and (3) Sean Williams, in his individual capacity and official capacity as deputy sheriff of Humphreys County. Doc. #1. The complaint alleges state and federal actions arising from an allegedly unlawful arrest of Sharkey by Williams. *Id.* at 2–5. The defendants jointly answered the complaint on March 5, 2018. Doc. #8.

On April 9, 2018, Williams, asserting the defense of qualified immunity, filed a motion seeking summary judgment against the claims brought against him in his individual capacity. Doc. #12. That day, United States Magistrate Judge Jane M. Virden stayed the case pending a decision on the summary judgment motion. Doc. #14. Three days later, Sharkey’s counsel filed a motion

to withdraw as counsel due to “a fundamental difference between himself and ... Sharkey.” Doc. #15.

On April 30, 2018, Judge Virden granted Sharkey’s counsel’s motion to withdraw. Doc. #18. In the order, Judge Virden provided Sharkey “thirty (30) days to obtain other counsel ... or notify the court that he intends to proceed *pro se* in the above styled cause.” *Id.* at 1.

Sharkey did not file a notice within thirty days. On May 31, 2018, the defendants filed a motion to dismiss for failure to comply with a court order. Doc. #19. On June 13, 2018, the Court received from Sharkey a document dated May 29, 2018. Doc. #20. Although less than clear, the document, which lists claims Sharkey wishes to pursue, appears to be a response to Judge Virden’s April 30 order. *See id.*

On June 22, 2018, Judge Virden issued a Report and Recommendation (“R&R”) finding that Sharkey’s filing “however off center, does not signal to the court that the plaintiff has abandoned his claims or ignored the court’s order.” Doc. #21 at 2. Accordingly, the R&R recommends that the motion to dismiss be denied and that “Plaintiff be given one last opportunity to properly comply with the court’s order.” *Id.* at 2–3. To this end, the R&R directs that Sharkey “within (14) days of today’s date, comply with the [18] order of the court to retain new counsel, or to inform the court that he will proceed *pro se*, or show cause why his cause should not be dismissed, *sua sponte*, for failure to comply.” *Id.* at 1.

On July 11, 2018, Sharkey filed a document dated July 6, 2018, which states that he is proceeding *pro se*, and which includes a series of unsworn statements regarding the facts of this case. Doc. #22.

II **Analysis**

Where objections to a report and recommendation have been filed, a court must conduct a

de novo review of those portions of the ... report and recommendation to which [a] Defendant[] specifically raised objections. With respect to those portions of the report and recommendation to which no objections were raised, the Court need only satisfy itself that there is no plain error on the face of the record.

Gauthier v. Union Pac. R.R. Co., 644 F.Supp.2d 824, 828 (E.D. Tex. 2009) (citing *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1)) (internal citations omitted).

This Court has reviewed the R&R, to which no objections have been filed, and has found no plain error. Accordingly, the Report and Recommendation [21] is **ADOPTED** as the order of the Court. The defendants' motion to dismiss [19] is **DENIED**.

Sharkey may file a response to Williams' motion for summary judgment within fourteen (14) days of this order. Should Sharkey file a response, Williams may file a reply within seven (7) days.

SO ORDERED, this 1st day of October, 2018.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE