

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

MARK HAMMETT, Register No. 154743,)
Plaintiff,)
v.) Case No. 09-4123-CV-C-SOW
J. COFIELD, et al.,)
Defendants.)

ORDER

On October 22, 2009, United States Magistrate Judge William A. Knox recommended dismissing plaintiff's claims. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1).

The court has conducted a de novo review of the record, including plaintiff's November 3, 2009 filing titled "Motion For Reconsideration: To Amend," which is treated as exceptions. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. Plaintiff's claims show a disagreement with his medical treatment and do not support a constitutional claim of deliberate indifference. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

Plaintiff's October 26, 2009 filing attempts to add new claims of retaliation which were not raised in his original complaint, and in fact, occurred subsequent to the filing of his original complaint. These claims are dismissed without prejudice to refiling if plaintiff deems it necessary. Plaintiff is advised that exhaustion of administrative remedies is mandatory prior to filing a complaint with this court, as set forth in 42 U.S.C. § 1997e.

IT IS, THEREFORE, ORDERED that plaintiff's new claims of retaliation which he attempts to add in response to dismissal of his claims are dismissed, without prejudice. [12] It is further

ORDERED that the Report and Recommendation of October 22, 2009, is adopted. [11] It is further

ORDERED that plaintiff's claims are dismissed, pursuant to the provisions of 28 U.S.C. § 1915A, for failure to state a claim for which relief can be granted. It is further

ORDERED that plaintiff's motions for a preliminary injunction and for reconsideration, treated as objections, are denied. [2, 13]

/s/ Scott O. Wright

SCOTT O. WRIGHT

Senior United States District Judge

DATED: November 16, 2009