Weathers v. Rock et al Doc. 56

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

ALBERT WEATHERS,

Plaintiff

v.

9:13-CV-195 (FJS/DEP)

DAVID ROCK, Superintendent, Upstate Correctional Facility; DONALD UHLER, Deputy Superintendent of Security, Upstate Correctional Facility; RABBI HELLER; RABBI FRIEDMANN; MICHAEL LIRA, Deputy of Programs, Upstate Correctional Facility; and JEFF MCCOY, Deputy Commissioner of Programs,

Defendants.

APPEARANCES

OF COUNSEL

ALBERT WEATHERS

Buffalo, New York 14212 Plaintiff *pro se*

OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL

MICHAEL G. MCCARTIN, AAG

The Capitol Albany, New York 12224 Attorneys for Defendants

SCULLIN, Senior Judge

ORDER

Plaintiff, a former New York State prison inmate, commenced this action in February 2013, asserting claims under 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc-1(a). *See* Dkt. No. 1.

When Plaintiff failed to appear for a scheduled deposition on two occasions in violation

of the Court's Orders, Defendants renewed a prior request for dismissal of Plaintiff's complaint. *See* Dkt. No. 51. In a Report and Recommendation dated December 8, 2014, Magistrate Judge Peebles recommended that the Court grant Defendants' motion and dismiss Plaintiff's complaint in its entirety. *See* Dkt. No. 53 at 10. Plaintiff filed a conclusory objection to that recommendation, arguing that he objected primarily because of issues due to "his mental state and not receiving Court documents." *See* Dkt. No. 54 at 2. With regard to his mental state, Plaintiff alleged that he

has been diagnos [sic] with SHU Syndrom [sic], impulse controll [sic], post traumatic stress disorder, adjust [sic] D/O with mixed anxiety, and is under the care of mental health counselors and doctors. He is prescribed medication Paroxetine 20 mg, Seroquel 25 mg, Buspar 15 mg, to help him combat his condition.

See id.

Plaintiff does not indicate when he was diagnosed with any of these ailments or why or how they would prevent him from complying with the Court's Orders, particularly those requiring his attendance at a deposition. Finally, Plaintiff requests that the Court "give him a chance to comply to all Courts [sic] rulings in all cases in the Norther District Court." *See id*.

When the parties do not object to a magistrate judge's report-recommendation or when their objections are conclusory or general in nature, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge." *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Peebles' December 8, 2014 Report and

Recommendation for clear error and manifest injustice and has found none. As Magistrate Judge

Peebles noted, Plaintiff has a history of non-compliance with Court directives and Defendants'

legitimate discovery requests. See Dkt. No. 53 at 9. In addition, Magistrate Judge Peebles

explained that, although he was concerned in his earlier decision about whether Plaintiff had

been adequately warned about the potential consequences of his refusal to be deposed, "it is now

well-document [sic] that he was made aware of those consequences in both the court's mandatory

Rule 16 scheduling order and [his] decision and order dated September 24, 2014." See Dkt. No.

53 at 9-10.

The record supports Magistrate Judge Peebles' conclusion that the sanction of dismissal is

warranted in this case. Accordingly, the Court hereby

ORDERS that Magistrate Judge Peebles' December 8, 2014 Report and

Recommendation, see Dkt. No. 53, is ACCEPTED in its entirety for the reasons stated therein;

and the Court further

ORDERS that Defendants' motion to dismiss, see Dkt. No. 51, is **GRANTED** and

Plaintiff's complaint is dismissed in its entirety; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Defendants and

close this case; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in

accordance with the Local Rules.

IT IS SO ORDERED.

Dated: March 2, 2015

Syracuse, New York

Frederick I Scullin Ir

Senior United States District Court Judge

-3-