

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RANDOLPH SCOTT,

Plaintiff,

v.

DECISION AND ORDER
15-CV-1000A

TIMOTHY B. HOWARD,
COUNTY OF ERIE,

Defendants.

This case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(B). On August 8, 2018, Judge Foschio filed a Decision and Order (Dkt. No. 108) denying Plaintiff's motion (Dkt. No. 94) to preclude Defendants from questioning Plaintiff at his deposition with respect to his record of criminal convictions. Judge Foschio also denied as moot Plaintiff's letter motion (Dkt. No. 97) requesting that Judge Foschio sign an Order precluding Defendants from this line of questioning. On August 20, 2018, Judge Foschio filed a Report and Recommendation (Dkt. No. 109), recommending that Plaintiff's motion for summary judgment (Dkt. No. 45) be denied.

On August 23, 2018 the Plaintiff filed an appeal of Judge Foschio's Decision and Order (Dkt. No. 110), and on August 31, 2018 he filed objections to the Report and Recommendation (Dkt. No. 112). Defendants filed their replies on August 24, 2018 and September 4, 2018, respectively (Dkt. Nos. 111 and 113). Both matters were deemed submitted without oral argument.

As to Judge Foschio's Decision and Order, pursuant to 28 U.S.C. §636(b)(1)(A),

the Court must review the Decision and Order to determine whether it is “clearly erroneous or contrary to law.” Upon such review, and assuming that the appeal is not moot, the Court affirms Judge Foschio’s Decision and Order.

As to Judge Foschio’s Report and Recommendation, pursuant to 28 U.S.C. §636(b)(1), the Court must make a *de novo* review of those portions of the Report and Recommendation to which specific objections have been made. Upon *de novo* review, and affording the *pro se* plaintiff the strongest reasonable reading of his arguments, the Court adopts Judge Foschio’s Report and Recommendation.

It is, therefore **ORDERED**, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in the Report and Recommendation (Dkt. No. 109), Plaintiff’s motion for summary judgment (Dkt. No. 45) is denied, and Plaintiff’s motions for preclusion (Dkt Nos. 94 and 97) are dismissed as moot.

This matter is recommitted to Judge Foschio for further proceedings. In light of the Plaintiff’s *pro se* status and the Court’s duty to liberally construe *pro se* pleadings to raise the strongest claims they raise, any future motions for summary judgment concerning the Plaintiff’s religious exercise claim should be analyzed under both the First Amendment’s Free Exercise Clause and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-2.¹

¹ The Plaintiff is seeking monetary damages (Docket No. 1 at 12), which are unavailable under RLUIPA, see *Sossamon v. Texas*, 563 U.S. 277, 280 (2011), but in an abundance of caution, the Court believes it would be prudent to analyze the Plaintiff’s religious exercise claims under RLUIPA.

IT IS SO ORDERED

Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: October 1, 2018