

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

NO. 4:10-CV-139-FL

JAMES M. JOHNSTON, )  
)  
Plaintiff, )  
)  
v. )  
)  
SHAWN SPEARS - S AND J OF )  
RALEIGH, )  
)  
Defendants. )

ORDER

This matter comes before the court on the memorandum and recommendation (“M&R”) of Magistrate Judge James E. Gates, pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b). The magistrate judge recommends that the court dismiss plaintiff’s *in forma pauperis* complaint under 28 U.S.C. § 1915(e)(2). No objections to the M&R have been filed.

Plaintiff filed an application to proceed *in forma pauperis* in this action on October 6, 2010. The magistrate judge granted the application by order entered November 22, 2010. However, the magistrate judge recommended that the action be dismissed for lack of subject matter jurisdiction. The magistrate judge noted that plaintiff’s action was substantively identical to an earlier action dismissed by the court on those grounds. See Johnson v. Spears, No. 4:10-CV-116-D (E.D.N.C. Sept. 27, 2010).

Absent a specific and timely filed objection, the court reviews a magistrate judge’s recommendation under 28 U.S.C. § 636(b) only for “clear error,” and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir.1983). The court has carefully considered the

complaint, the magistrate judge's analysis, and the earlier order dismissing plaintiff's substantively identical previous lawsuit. The court agrees with the magistrate judge that subject matter jurisdiction is lacking, and accordingly ADOPTS the M&R (DE # 3) as its own. This action is accordingly DISMISSED.

SO ORDERED, this the 17th day of December, 2010.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style.

LOUISE W. FLANAGAN  
Chief United States District Judge