

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:14-CV-84-BO

ANTHONY MCNAIR,)
Plaintiff,)
v.)
U.S. GOVERNMENT,)
Defendant.)
_____)

ORDER

This cause comes before the Court on the memorandum and recommendation of United States Magistrate Judge James E. Gates regarding frivolity review pursuant to 28 U.S.C. § 1915(e)(2). Plaintiff has not objected to the memorandum and recommendation (M&R). For the reasons discussed below, the Court adopts the M&R and dismisses this matter in its entirety.

BACKGROUND

Plaintiff contends that a pre-filing injunction entered against him in this district violates his First Amendment rights and deprives him of his constitutional rights of redress. The Court concurs with Magistrate Judge Gates' conclusion that the pre-filing injunction does not enjoin plaintiff from filing this action in which he challenges the propriety of the pre-filing injunction itself.

DISCUSSION

A claim proceeding *in forma pauperis* may be dismissed at any time if it is frivolous. 28 U.S.C. § 1915(e)(2)(B)(i). A complaint is frivolous if "it lacks an arguable basis either in law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A court may consider subject matter jurisdiction on frivolity review. *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999). To make

a frivolity determination, a court may designate a magistrate judge “to submit . . . proposed findings of fact and recommendations” for the disposition of a variety of motions. 28 U.S.C. § 636(b)(1)(B).

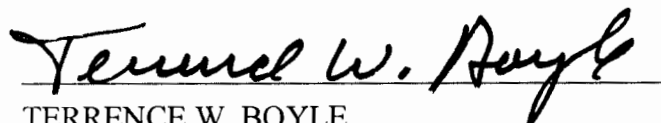
A district court is required to review de novo those portions of an M&R to which a party timely files specific objections or where there is plain error. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). De novo review is not required when an objecting party makes only general or conclusory objections that do not direct a court to a specific error in the magistrate judge’s recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Further, when “objections to strictly legal issues are raised and no factual issues are challenged, de novo review may be dispensed with.” *Id.*

Plaintiff having failed to timely object to the M&R, the Court has reviewed the recommendation of Magistrate Judge Gates and finds it to be without plain error. Thus, the Court adopts the M&R in its entirety.

CONCLUSION

For the foregoing reasons, the memorandum and recommendation [DE 6] is ADOPTED and this matter is DISMISSED in its entirety. The clerk is DIRECTED to enter judgment accordingly and to close the file.

SO ORDERED, this 4 day of June, 2014.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE