

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:09-CV-170-BO

CARLOS A. ALFORD,)
)
 Plaintiff,)
)
 v.)
)
 KATRINA KNIGHTS, VERNA)
 MANSFIELD, CECELIA PEERS, BRIAN)
 MANSFIELD, and GOOD SHEPHERD)
 MINISTRIES, INC.,)
)
 Defendants.)
_____)

ORDER

This matter is before the Court on Plaintiff’s application to proceed *in forma pauperis*, and for frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B) (D.E. #3); Plaintiff’s Motion for Default Judgment (D.E. #11); Plaintiff’s Motion for Extension of Time (D.E. #22); and Defendant’s Motion to Dismiss (D.E. #18). For the reasons stated below, Plaintiff’s claim is DISMISSED IN PART; Plaintiff’s Motion for Default Judgment is DENIED. Plaintiff’s Motion for Extension of Time is GRANTED. Defendant’s Motion to Dismiss is DENIED.

BACKGROUND

Magistrate Judge David W. Daniel filed an Order and Memorandum and Recommendation (M&R) on March 15, 2010. The magistrate found Plaintiff’s application to proceed *in forma pauperis* appropriate, and that Plaintiff’s Complaint survives frivolity review as to Good Shepard Ministries, Celecia Peers, and Brian Mansfield, but recommended that the underlying Complaint be dismissed against Katrina Knight and Verna Mansfield, as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). Plaintiff filed a Motion for Extension of Time with this

Court on May 27, 2010, requesting that both his March 15, 2010 and April 13, 2010 objections be considered by this Court.

DISCUSSION

Under Local Rule 72.4(b), this Court “shall make a *de novo* determination of those portions of [an M&R] to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”


As an initial matter, Plaintiff filed a Motion for Extension of Time for his objections to Judge Daniel’s Memorandum and Recommendation. For good cause shown, Plaintiff’s Motion for Extension of Time is GRANTED. This Court has considered Plaintiff’s objections in making a determination on whether or not to adopt Judge Daniel’s recommendation.

Plaintiff’s Motion for Default Judgment is frivolous and without merit, as it was filed even before a Summons and Complaint had been served on all Defendants. Accordingly, Plaintiff’s Motion for Default Judgment is DENIED. Defendants’ Motion to Dismiss was also filed before Plaintiff filed his Amended Complaint, and thus is no longer applicable. Therefore, Defendants’ Motion to Dismiss is MOOT and DENIED.

This Court has conducted a careful review of the Magistrate’s Order and other documents of record, and having done so, hereby finds that the recommendations of Judge Daniel are, in all respects, in accordance with the law. Therefore, this Court adopts the recommendation of the Magistrate Judge and Plaintiff’s application to proceed *in forma pauperis* is GRANTED. The Complaint against Katrina Knight and Verna Mansfield is DISMISSED. Plaintiff is permitted to proceed against Good Shepard Ministries, Celecia Peers, and Brian Mansfield.

SO ORDERED.

This 1 day of August, 2010.



TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE