

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

NO. 7:10-CV-243-FL

MICHAEL E. THRASH,)
)
 Plaintiff,)
)
 v.)
)
 DARE COUNTY AIRPORT)
 AUTHORITY,)
)
 Defendant.)

ORDER

This matter comes before the court on motion by Dare County Airport Authority (“defendant”) for reconsideration (DE # 16). Plaintiff did not timely file a response within the time permitted for so doing. In this posture, the issues raised are ripe for review. For the reasons that follow, defendant’s motion for reconsideration is denied.

STATEMENT OF THE CASE

Plaintiff filed this action pursuant to 42 U.S.C. § 1983 on December 6, 2010. On February 28, 2011, the court conducted frivolity review pursuant to 28 U.S.C. § 1915A. The court determined that several individual defendants, as well as the North Carolina Department of Health and Human Services, Division of Medicaid Assistance (“NCDHHS”), were improper defendants for purposes of § 1983. However, the court could not reach the same conclusion as to Dare County Airport Authority, and therefore permitted plaintiff’s claims to proceed against it while dismissing plaintiff’s claims against all other defendants.

Defendant was served with copy of summons and complaint on March 22, 2011, and filed

verified answer, together with supporting exhibits, on April 12, 2011. On April 19, 2011, defendant filed the instant motion for reconsideration, seeking review of the court's frivolity determination. Plaintiff did not respond.

The court notes that on April 19, 2011, defendant also filed motion to dismiss together with motion for judgment on the pleadings (DE # 18), which have been fully briefed. On May 31, 2011, plaintiff filed motion to appoint counsel (DE # 24) and motion for summary judgment (DE # 25), which also have been fully briefed. The clerk of court is directed to refer these motions to United States Magistrate Judge William A. Webb for review and entry of memorandum and recommendation pursuant to 28 U.S.C. § 636(b)(1).

Finally, as to the status of the case schedule, the court notes that its initial order issued on May 4, 2011. Defendant filed motion to stay commencement of discovery pending resolution of the above-referenced dispositive motions, which motion was granted June 7, 2011.

DISCUSSION

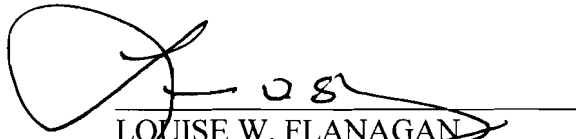
Defendant now seeks reconsideration of the court's frivolity determination, asserting that plaintiff provided incomplete information in his complaint and supporting exhibits, and that therefore the court in making its frivolity determination was not fully informed. On this basis, defendant asserts that, now presented with more complete information, the court should reconsider its previous order and dismiss plaintiff's claims.

Having considered the arguments raised, the court finds no cause to disturb its previous determination on frivolity review. Defendant's arguments are more properly raised in form of those motions, already ripe, which now are referred to the magistrate judge for review. Accordingly, defendant's motion for reconsideration is denied.

CONCLUSION

Defendant's motion for reconsideration (DE # 16) is DENIED. The Clerk is DIRECTED to refer the following motions to the magistrate judge for review pursuant to 28 U.S.C. § 636(b)(1): defendant's motion to dismiss and motion for judgment on the pleadings (DE # 18), plaintiff's motion to appoint counsel (DE # 24), and plaintiff's motion for summary judgment (DE # 25).

SO ORDERED, this the 19th day of July, 2011.



LOUISE W. FLANAGAN
Chief United States District Judge