

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TOM ARBINO,	:	NO. 1:11-CV-373
	:	
Plaintiff,	:	
	:	
vs.	:	OPINION AND ORDER
	:	
CINCINNATI BELL,	:	
	:	
Defendant.	:	

This matter is before the Court on the Magistrate Judge’s Report and Recommendation (doc. 8), to which there were no objections. For the reasons indicated herein, the Court ADOPTS and AFFIRMS the Magistrate Judge’s Report and Recommendation and DISMISSES this matter from the Court’s docket.

Plaintiff filed his Complaint in forma pauperis on June 14, 2011, requesting that felony charges be filed and a fine be levied against Defendant as relief for the poor service he received from Defendant (Id.). Specifically, Plaintiff alleges that he had continual problems with his internet service (Id.). He states he was charged each time Cincinnati Bell personnel repaired his internet connection, just to have his service break down again (Id.).

In her June 14, 2011 Report and Recommendation concerning Plaintiff’s Complaint, the Magistrate Judge gave sua sponte review

to this matter and found that the Court lacks both diversity and federal subject matter jurisdiction over Plaintiff's claims for relief (doc. 8, citing 28 U.S.C. §§ 1332(a), 1331). The Magistrate Judge also found the substance of Plaintiff's claim lacking in merit and recommended that it be dismissed under 28 U.S.C. § 1915(e)(2)(B)(i) (Id.).

Having reviewed this matter, and noting no objections, the Court finds the Magistrate Judge's Report and Recommendation well-taken regarding lack of diversity and subject matter jurisdiction. The Court sympathizes, however, with Plaintiff's frustration over alleged poor service and internet problems. Such a situation is clearly maddening. The Court disagrees with the Magistrate Judge's conclusion that Plaintiff's allegations are frivolous. Plaintiff's affidavit (doc. 3) shows he is a consumer with a service contract with Cincinnati Bell with which he is unsatisfied due to Defendant's alleged repeated failures and wrong billings. It is incorrect to characterize Plaintiff's Complaint as frivolous or to suggest it is irrational. Plaintiff simply filed his pro se Complaint in the wrong forum.

Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation to the extent that it DISMISSES the Complaint for lack of jurisdiction, and CERTIFIES pursuant to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of this Order would not be taken in good faith and therefore denies

plaintiff leave to appeal in forma pauperis. Plaintiff, a non-prisoner, remains free to apply to proceed in forma pauperis in the Court of Appeals. (Id. citing Callihan v. Schneider, 178 F.3d 800, 803 (6th Cir. 1999), overruling in part Floyd v. United States Postal Serv., 105 F.3d 274, 277 (6th Cir. 1997)).

SO ORDERED.

Dated: August 9, 2011

/s/ S. Arthur Spiegel

S. Arthur Spiegel
United States Senior District Judge