

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JAMIE ELLIOTT, *et al.* :  
 :  
 Plaintiffs : Civil Action 2:08-cv-1144  
 :  
 v. : Judge Marbley  
 :  
 GARY SIMS, *et al.* : Magistrate Judge Abel  
 :  
 Defendants. :

**OPINION AND ORDER**

On December 11, 2008, Plaintiff Jamie Elliott moved for designation of this case as a class action (Doc. 5). On February 17, 2009, the Magistrate Judge issued a report and recommendation on this motion, recommending that it be denied (Doc. 20). This matter is now before the Court on Plaintiff's objections to the report and recommendation (Doc. 26), for *de novo* review pursuant to Fed. R. Civ. Pro. 72(b)(3).

Plaintiff, a prisoner, is suing the religious services administrator of the Ohio Department of Rehabilitation and Correction and the warden of the Ross Correctional Institution alleging that he has been wrongly denied a religious work proscription on the Christian sabbath.<sup>1</sup> In his motion, he sought to have this action designated as a class action, stating that in his estimation approximately 188 other

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<sup>1</sup> Two other prisoners have joined this action as plaintiffs since the filing of the motion for designation of this case as a class action.

prisoners have an interest in the same relief he seeks, that there are questions of law and fact common to the entire proposed class, that he can adequately protect the interests of the class, that his claims are typical of the proposed class, and that the prosecution of separate actions by individual plaintiffs would run the risk of inconsistent adjudications. (Doc. 5 at 2-3.)

However, the Magistrate Judge found, in his report and recommendation, that non-attorney *pro se* litigants cannot fairly and adequately represent and protect the interests of class members. *McGoldrick v. Werholtz*, 185 Fed. Appx. 741, 744, 2006 WL 1704463, \*\*2 (10th Cir. June 22, 2006); *Fymbo v. State Farm Fire and Casualty Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000); *Phillips v. Tobin*, 548 F.2d 408, 413-15 (2d Cir. 1976); *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975). Therefore, claims brought by prisoners not represented by counsel cannot be maintained as class actions. *Martin v. Middendorf*, 420 F. Supp. 779, 780-81 (D. D.C. 1976); *Carlisle v. Sierlaff*, 62 F.R.D. 441, 442 (E.D. Ill. 1974); *Jeffrey v. Malcolm*, 353 F. Supp. 395, 397 (S.D. N.Y. 1973).

Plaintiff Jamie Elliott, in his objections, conceded that *pro se* prisoner litigants could not maintain class action lawsuits. (Doc. 26 at 1.) However, he noted that he had also moved, on December 11, 2008, for appointment of counsel (Doc. 8), and suggested that this case could be maintained as a class action if counsel were appointed. On July 21, 2009, the Magistrate Judge denied the motion (Doc. 54), finding that this case did not warrant the appointment of counsel for Plaintiffs. Neither Plaintiff Jamie Elliott nor any other party filed objections to this

order, for the time in which to object has passed. Therefore, as Plaintiffs are not represented by counsel, and do not dispute the Magistrate Judge's conclusion that *pro se* prisoners cannot maintain class actions, the Report and Recommendation (Doc. 20) is **ADOPTED**, and Plaintiff's Motion for Designation as a Class Action Civil Suit (Doc. 5) is **DENIED**.

s/Algenon L. Marbley  
United States District Judge