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

DEANO MCCORT,

Plaintiff,

vs.

Case No.: 2:17-cv-620
JUDGE GEORGE C. SMITH
Magistrate Judge Jolson

MUSKINGUM COUNTY, *et al.*,

Defendants.

OPINION AND ORDER

On August 16, 2018, the United States Magistrate Judge issued a Report and Recommendation and Order recommending that Plaintiff's Motion for Leave to Appeal be denied as premature and Plaintiff's Motion for a Stay of Judgment and the Proceedings and to Issue an Injunction Pending Appeal be denied as moot. (*See* Doc. 54). Additionally, the Magistrate Judge ordered:

> Plaintiff is **ORDERED** to file his opposition to the pending Motion for Summary Judgment (Doc. 34) no later than **thirty days** after the issuance of this Report and Recommendation and Order. Finally, if Defendants' Motion for Summary Judgment is denied as to any of Plaintiff's claims, this Court will consider a motion for appointment of counsel should Plaintiff opt to file one. *See Henry v. City of Detroit Manpower Dep't*, 763 F.2d 757, 760 (6th Cir. 1985) (en banc) ("[I]n considering an application for appointment of counsel, district courts should consider plaintiff's financial resources, the efforts of plaintiff to obtain counsel, and whether plaintiff's claim appears to have any merit.").

(Doc. 54 at 3). The parties were advised of their right to object or seek reconsideration by the District Judge. This matter is now before the Court on Plaintiff's Objections to the August 16, 2018 Report and Recommendation and Order. (*See* Doc. 56). Defendants have responded in opposition. (Doc. 57).

When reviewing objections, "the Court must give considerable deference" to the Magistrate Judge's order. *Waddy v. Coyle*, 2013 WL 55662, No. 3:98-cv-84, *2 (S.D. Ohio 2013). Where a plaintiff objects to an opinion of a Magistrate Judge concerning a nondispostive matter, the Magistrate Judge's order must stand unless it is "clearly erroneous" or "contrary to law." Fed. R. Civ. P. 72(a). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *U.S. v. Mabry*, 518 F.3d 442, 449 (6th Cir. 2008) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)); *see also Bethel v. Bobby*, 2018 U.S. Dist. LEXIS 51306, S.D. Ohio No. 2:10-cv-391 (March 28, 2018). The "clearly erroneous" standard applies only to factual findings made by the Magistrate Judge, while legal conclusions will be reviewed under the more lenient "contrary to law" standard. *Rutledge v. Claypool Elec. Inc.*, No. 2:12-cv-0159, 2013 U.S. Dist. LEXIS 15344, at *5 (S.D. Ohio Feb. 5, 2013) (quoting *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio Feb. 24, 1992)). To demonstrate that an order is contrary to law, the Plaintiff "must demonstrate that the conclusions ignore or contradict relevant precepts of law." *Id*.

Plaintiff's objects to the denial of his right to appeal. He maintains that he had the right to terminate his deposition because he wanted counsel present at the deposition. He argued that his deposition, that is the basis for Defendants' Motion for Summary Judgment, should have been stricken from the record, but that motion was denied. Plaintiff also argued that the deposition should not have been permitted to go forward, but that was also denied. Plaintiff then sought an interlocutory appeal on those rulings.

The Court has carefully reviewed the Magistrate Judge's Report and Recommendation and Order, as well as Plaintiff's objections and Defendants' Response. The Court agrees with the conclusion of the Magistrate Judge that Plaintiff has failed to set forth a sufficient basis for an interlocutory appeal of this Court's Orders.

Plaintiff cites 28 U.S.C. § 1292(b) as the basis for seeking an interlocutory appeal. 28 U.S.C. § 1292(b) states:

> When a district judge, in making a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal form the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order. *Provided, however,* That (sic) application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

However, Plaintiff has failed to satisfy the aforementioned basis for a discretionary, interlocutory appeal. He has not cited a controlling question of law that gives rise to a difference of opinion. Plaintiff takes issue with not having counsel for his deposition but he filed this action pro se and as the Court has repeatedly held, he has no constitutional right to appointed counsel. ; 2) that an immediate appeal materially advances the termination of the case; 3) the district judge gives this opinion in writing in the opinion; and 4) the appealing party submits its application of appeal to a circuit court within ten days after the entry of such order. Plaintiff cannot satisfy any of these criteria.

Further, an interlocutory appeal in this case would not materially advance the ultimate resolution of this case but would rather delay any such final judgment. Finally, Plaintiff did not

timely request such an appeal. Accordingly, Plaintiff has failed to satisfy the statutory requirements to seek an interlocutory appeal in this case.

Therefore, for the reasons set forth above and as stated in detail in the Magistrate Judge's Report and Recommendation and Order, Plaintiff's objections are without merit and are hereby **OVERRULED**.

The Report and Recommendation and Order, ECF No. 54, is hereby **ADOPTED** and **AFFIRMED.** Plaintiff's Motion for Leave to Appeal is **DENIED** as premature and Plaintiff's Motion for a Stay of Judgment and the Proceedings and to Issue an Injunction Pending Appeal is **DENIED AS MOOT**. Additionally, Plaintiff is **ORDERED** to file his opposition to the pending Motion for Summary Judgment (Doc. 34) no later than 30 days after the issuance of this Opinion and Order.

The Clerk shall remove Documents 51, 52, and 54 from the Court's pending motions list.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT