

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

FRANK DAVIS

Plaintiff,

-v-

THE CLARK COUNTY BOARD OF
COMMISSIONERS, et al.,

Defendants.

Case No. C-3:08-cv-412

Judge Thomas M. Rose
Magistrate Sharon L. Ovington

**ENTRY AND ORDER OVERRULING DAVIS'S AMENDED
OBJECTIONS (Doc. #31) TO THE MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATIONS; OVERRULING DAVIS'S OBJECTIONS
(Doc. #35) TO THE MAGISTRATE JUDGE'S SUPPLEMENTAL REPORT
AND RECOMMENDATIONS; ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (Doc. #29) AND
SUPPLEMENTAL REPORT AND RECOMMENDATIONS (Doc. #32) IN
THEIR ENTIRETY; AND TERMINATING THIS CASE**

This matter comes before the Court pursuant to Plaintiff Frank Davis's ("Davis's") Objections to Magistrate Judge Sharon L. Ovington's Report and Recommendations and Supplemental Report and Recommendations. The Report and Recommendations was entered on November 16, 2009 (doc. #29) and the Supplemental Report and Recommendations on December 10, 2009 (doc. #32).

On December 4, 2009, Davis filed Amended Objections (doc. #31) to the Report and Recommendations. On December 10, 2009, Defendants Clark County Commissioners, Stephen Collins, John Dietrick, David Hartley, Stephen Schumacher, and Roger Tackett (hereinafter the "Clark County Defendants") filed a response to Davis's Amended Objections to the Report and Recommendations. (Doc. #33.) Also on December 10, 2009, Defendants City of Springfield,

Steven Moody and Gregory Nourse (hereinafter the “Springfield Defendants”) filed a response to Davis’s Amended Objections to the Report and Recommendations. (Doc. #34.)

On December 28, 2009, Davis filed Objections to the Supplemental Report and Recommendations. (Doc. #35.) On January 18, 2010, the Clark County Defendants filed a response to Davis’s Objections to the Supplemental Report and Recommendations. However, this Response was filed outside of the time requirements set forth in Fed. R. Civ. P. 72 and will not be further considered. The Springfield Defendants have not filed a response to Davis’s Objections to the Supplemental Report and Recommendations.

The Report and Recommendations addresses Davis’s § 1983 claims. The Magistrate Judge finds that Davis’s false arrest and false imprisonment claims accrued shortly after November 23, 1998, the date that Davis became held pursuant to process. The Magistrate Judge also determined that Davis’s malicious prosecution claim against Clark County accrued no later than September 29, 2006, when the Second District Court of Appeals reaffirmed Davis’s previously vacated conviction. As a result, the statute of limitations had run on Davis’s § 1983 claims before they were made. The Magistrate Judge also determined that the statute of limitations was not tolled. Finally, the Magistrate Judge recommends denying Davis’s Motion To File an Amended Complaint because it would be an exercise in futility. In sum, the Report and Recommendations recommends that the Clark County Defendants’ and the Springfield Defendants’ Motions for Judgment On the Pleadings be granted. It also recommends that all state law claims be dismissed without prejudice and that Davis’s Motion for Leave To File Amended Complaint be denied.

Davis argues, for the first time in his Objections to the Report and Recommendations,

that he has made a separate federal claim for a violation of the Fourth Amendment in the form of the unlawful search and seizure itself. The Magistrate Judge found that this claim is not provided for by the law and, if it were, it would have accrued on the date of the search and seizure, it would thus be time barred and it would not be subject to tolling. As a result, in the Supplemental Report and Recommendations, the Magistrate Judge recommends that the Defendants' Motions for Judgment On the Pleadings be granted as to Davis's additional Fourth Amendment unlawful search and seizure claim.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Davis's Amended Objections to the Report and Recommendations and Davis's Objections to the Supplemental Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Magistrate Judge's Report and Recommendations and Supplemental Report and Recommendations are adopted in their entirety.

The Clark County Defendants' and the Springfield Defendants' Motions for Judgment On the Pleadings are GRANTED. All of Davis's state-law claims are dismissed without prejudice. Davis's Motion for Leave To File Amended Complaint is OVERRULED. Finally, the above captioned case is hereby ordered terminated on the docket records of the United States District Court for the Southern District of Ohio, Western Division at Dayton.

DONE and ORDERED in Dayton, Ohio, this Twenty-First day of January, 2010.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record