

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

MARK ALEX KINKEAD,)	
)	
Plaintiff,)	
)	
v.)	CIV-13-49-R
)	
DON SUTMILLER, et al.;)	
)	
Defendants.)	

ORDER

Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, filed this action pursuant to 42 U.S.C. § 1983, alleging the violation of his constitutional rights. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Shon T. Erwin for preliminary review. On February 6, 2014, Judge Erwin issued two Report and Recommendations (Doc. Nos. 44 and 45), wherein he recommended (1) that Plaintiff's "Motion Seeking Relief from Delay and Restriction to Access to the Courts" be denied (Doc. No. 14) and (2) that Plaintiff's Motion for Default Judgment and Motion for Summary Judgment be denied (Doc. Nos. 24 and 25). The matter is currently before the Court on Plaintiff's timely objection to the Report and Recommendation.

In the Report and Recommendation at Document Number 44, addressing Plaintiff's request for access to the Court's, Judge Erwin summarizes the motion as requesting that Plaintiff be given greater access to the law library, and construed the motion as one seeking injunctive relief. Judge Erwin concluded that Plaintiff had failed to meet the burden of establishing that he was entitled to injunctive relief under Rule 65. In his objection, Plaintiff

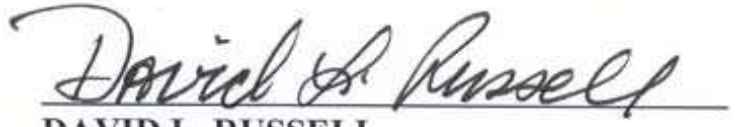
casts a far wider net than the issue addressed by the Report and Recommendation with regard to library access, and most of his filing addresses issues related to safety and medical care and the remainder of his substantive claims, which were not implicated in his motion at Document Number 14. Although the issues raised by Plaintiff's Amended Complaint and his objection to the Report and Recommendation are serious, the only issue before the Court with regard to the first Report and Recommendation is whether Plaintiff is entitled to injunctive relief regarding library access. His objection, even construed liberally, fails to establish that he is entitled to the relief he requested pursuant to Rule 65. Accordingly, the Report and Recommendation (Doc. No. 44) is hereby ADOPTED in ITS ENTIRETY, and Plaintiff's Motion (Doc. No. 14) is hereby DENIED.

Report and Recommendation Document No. 45 addresses Plaintiff's Motion for Default Judgment (Doc. No. 24) and Motion for Summary Judgment (Doc. 25), which was premised on Defendant Sutmiller's alleged failure to respond to the suit. Judge Erwin recommended denial of the motion for default judgment, as there has been no Clerk's entry of default. There remains no clerk's entry of default, and accordingly, the Court may not enter default judgment in Plaintiff's favor, and further, Defendant Sutmiller has joined in a motion to dismiss that is currently pending before Judge Erwin, indicating that he will defend against Plaintiff's allegations, making default inappropriate.¹ As such, the Court hereby

¹ Furthermore, because Plaintiff's motion for summary judgment was based solely on the failure to respond to the suit, and because it was not properly supported, it is similarly denied.

ADOPTS the Report and Recommendation (Doc. No. 45) and the Plaintiff's motions, Doc. No. 24 and 25, are hereby DENIED.

IT IS SO ORDERED this 15th day of April, 2014.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE