

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

WILLIAM M. USCHOCK,)
vs.)
COMMONWEALTH OF)
PENNSYLVANIA,)
Plaintiff,) 2:17cv516
vs.) Electronic Mail
Defendant.)
Judge David Stewart Cercone/
Chief Magistrate Judge Maureen P. Kelly

ORDER

The above-captioned civil rights complaint was received by the Clerk of Court on April 21, 2017, and was referred to Chief United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72 of the Local Rules for Magistrate Judges.

Chief Magistrate Judge Kelly, in a Report and Recommendation (the “Report”), ECF No. 4, filed on May 5, 2017, recommended that the Complaint be dismissed pre-service pursuant to 28 U.S.C. § 1915(e) for failure to state a claim upon which relief can be granted. Service of the Report was made on the Plaintiff at his address of record. Plaintiff was given until May 22, 2017 to file any objections. Plaintiff’s objections were docketed on May 15, 2017, ECF No. 5. After review, the Court finds that none of the objections merits rejection of the Report or extended comment.

Plaintiff attempts to sue the Commonwealth of Pennsylvania for an alleged due process and takings clause violation based upon the so-called “Dunham Rule.” The Report found that Plaintiff failed to state a claim based upon at least two independent grounds. First, the Dunham

Rule does not deprive Plaintiff of property and so does not violate either procedural or substantive due process or the takings clause. Second, the Commonwealth may not be sued in federal court based upon Eleventh Amendment immunity and/or because the Commonwealth does not constitute a “person” for purposes of Section 1983. Plaintiff does not object to the first ground. Furthermore, he does not contend that the Commonwealth is a person. Rather, Plaintiff solely complains that he may sue the Commonwealth in federal Court because his research reveals that the “the 14th Amendment trumps the 11th Amendment.” ECF No. 5.

Plaintiff's objections are misplaced. First, while the United States Congress does have the ability to promulgate legislation pursuant to the Fourteenth Amendment that can subject a state to regulation, plaintiff has failed to identify any such statutory authority here and as a result he may not rely on vague notions of a due process violation to obtain a recovery. See Jones v. Hashagen, 512 F. App'x 179, 182 (3d Cir. 2013) (“This immunity, afforded by the Eleventh Amendment, can only be abrogated by Congress or by state consent. Congress has not abrogated the immunity regarding Jones' claims, nor has Pennsylvania consented to suit.”)(citations omitted); Lavia v. Pennsylvania, Dep't of Corrections, 224 F.3d 190, 195 (3d Cir. 2000) (“the type of relief sought is irrelevant to the question of Eleventh Amendment immunity.”). Moreover, even if Plaintiff's objections had any merit as to the Eleventh Amendment immunity, the alternative grounds relied upon in the Report and not challenged in the Objections, are sufficient to dismiss the Complaint.

Accordingly, after *de novo* review of the pleadings and the documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 18th day of July, 2017;

IT IS HEREBY ORDERED that the Complaint is dismissed with prejudice pursuant to 28 U.S.C. §1915(e) for failure to state a claim upon which relief can be granted.

IT IS FURTHER ORDERED that the Report and Recommendation, ECF No. 4, filed on May 5, 2017, by Chief Magistrate Judge Kelly, is adopted as the opinion of the Court. The Clerk is to mark the case closed.

Lastly, the Court certifies pursuant to 28 U.S.C. § 1915(a) that any appeal from this order would not be taken in good faith.



David Stewart Cercone
United States District Judge

cc: The Honorable Maureen P. Kelly
Chief United States Magistrate Judge

William M. Uschock
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(*Via First Class Mail*)