

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Kevin Schaap,

Civil Action No. 0:16-cv-2778-CMC

Plaintiff,

vs.

ORDER

Susan Stokley Clary; Susan Stokley Clary, in
her official capacity as clerk of the Supreme
Court; Supreme Court of Kentucky;
Commonwealth of Kentucky,
Defendants.

This matter is before the court on Plaintiff's complaint alleging that Defendants are conspiring to deprive him of due process because they have failed to rule on an appeal he has pending before the Supreme Court of Kentucky ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2), D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation ("Report"). On September 30, 2016, the Magistrate Judge issued a Report recommending that this matter be summarily dismissed without prejudice, and without issuance and service of process. ECF No. 10. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed initial objections on October 14, 2016, but also requested an extension of time to file further objections. ECF No. 12. After the extension of time, Plaintiff filed supplemental objections to the Report on November 15, 2016. ECF No. 17.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a de novo

determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b).

After considering the record, the applicable law, the Report and Recommendation of the Magistrate Judge and Plaintiff's objections, the court agrees with the Report's recommendation that the complaint be dismissed based on immunity and futility. The court has considered Plaintiff's objections; however, they are insufficient to overcome immunity for Defendants Commonwealth and Supreme Court of Kentucky, as well as Defendant Clary in her official capacity. As to Defendant Clary in her individual capacity, Plaintiff has failed to allege facts sufficient to explain how Clary's purported inaction deprived him of due process. Plaintiff relies on conclusory allegations that the facts and docket "speak for themselves" and that there is "no other reasonable conclusion" other than the clerk committing fraud in refusing to submit his motions to the court. *See* ECF No. 17 at 6-7; ECF No. 1 at ¶¶ 24-25. However, this is insufficient to explain how Plaintiff was deprived of due process. Accordingly, the court adopts the Report by reference in this Order. Plaintiff's Complaint is hereby dismissed without prejudice.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
January 23, 2017