



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

JOHN DANIEL KEMMERLIN,
Plaintiff,

vs.

CLARA HEARTLINE et al.,
Defendants.

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CIVIL ACTION NO. 4:10-204-HFF-TER

ORDER

This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the motions filed by the defendants (documents #14 and #31) for summary judgment be granted in their entirety and the case dismissed. The Magistrate Judge further recommends that Plaintiff's motion for summary judgment (document #35) be denied. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on October 1, 2010, and the Clerk of Court entered Plaintiff's objections to the Report on October 14, 2010. The Court has reviewed the objections, but finds them to be without merit. Therefore, it will enter judgment accordingly.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report to the extent that it does not contradict this Order, and incorporates it herein. Therefore, it is the judgment of this Court that the motions filed by the defendants (documents #14 and #31) for summary judgment are **GRANTED** as to Plaintiff's federal claims and those federal claims are **DISMISSED** with prejudice. Moreover, Plaintiff's motion for summary judgment (document #35) is **DENIED**.

To the extent that Plaintiff raises any state claims, those claims are **DISMISSED** without prejudice so that Plaintiff can pursue them in state court if he wishes to do so.

IT IS SO ORDERED.

Signed this 26th day of October, 2010, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.