Simmons v. Byars et al Doc. 137

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

Darren Simmons, #182509,)
) No. 5:13-cv-2754-RMG
Plaintiff,)
v.)
) ORDER
William R. Byars, Jr. et al., sued in their)
individual capacity,)
Defendants.)

This matter comes before the Court on the Report and Recommendation ("R&R") of the Magistrate Judge recommending that Plaintiff's motion for declaratory judgment and/or motion for temporary restraining order, (Dkt. No. 17), and Plaintiff's motion for a temporary restraining order, (Dkt. No. 84), be denied. (Dkt. No. 119). As set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Plaintiff, a state prisoner proceeding pro se, filed this action asserting various violations of his rights by prison officials and employees. Subsequently, Plaintiff filed a motion for declaratory judgment and/or motion for temporary restraining order, (Dkt. No. 17), and a second motion for a temporary restraining order, (Dkt. No. 84). Defendants filed responses opposing the motions. (Dkt. Nos. 89, 93, 103, 104). The Magistrate Judge then issued the present R&R recommending the Court deny Plaintiff's motions. (Dkt. No. 119). Plaintiff did not file timely objections to the R&R.

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with

this Court. Mathews v. Weber, 423 U.S. 261, 270-71 (1976). This Court is charged with making

a de novo determination of those portions of the R&R to which specific objection is made.

Additionally, the Court may "accept, reject, or modify, in whole or in part, the findings or

recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). This Court may also

"receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Discussion

After review of the record and the R&R and finding no clear error on the face of the

record, the Court agrees with and adopts the R&R as the order of the Court. Diamond v.

Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005). The Court agrees Plaintiff

has failed to satisfy the heavy burden required to obtain injunctive relief.

Conclusion

As set forth above, the Court agrees with and adopts the R&R as the order of the Court.

(Dkt. No. 119). Accordingly, Plaintiff's motion for declaratory judgment and/or motion for

temporary restraining order, (Dkt. No. 17), and motion for a temporary restraining order, (Dkt.

No. 84), are denied.

AND IT IS SO ORDERED.

Richard Mark Gergel

United States District Court Judge

May 12, 2014

Charleston, South Carolina

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