



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

LARRY JAMES TYLER,
Plaintiff,

vs.

PATRICIA RAY, TONEY CHAVIS,
JAMES BOGLE, SR., ESQ., C.O. HICKS,
and C.O. BENJAMIN,
Defendants.

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CIVIL ACTION NO. 9:17-01471-MGL-BM

ORDER ADOPTING REPORT AND RECOMMENDATION,
GRANTING DEFENDANT JAMES BOGLE, SR., ESQ.'S MOTION TO DISMISS,
AND DISMISSING HIM AS A PARTY DEFENDANT

This case was filed as an action under 42 U.S.C. § 1983. 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 Defendant James Bogle, Sr., Esq.'s (Bogle) motion to dismiss be granted, and Bogle be dismissed as a party Defendant in this case. 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 6, 2017, ECF No. 42, but Plaintiff failed to file any objections to the Report. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

The Court notes Plaintiff filed a Second Response in Opposition (Second Response) to Bogle's motion to dismiss. ECF No. 40. The Second Response was entered the same day as the Report, October 6, 2017. *Id.* The Second Response was both unwarranted, given Plaintiff had already responded, ECF No. 19, and Bogle had replied, ECF. No. 27, and untimely, coming more than two weeks after Bogle's reply. In an abundance of caution, however, the Court has read and considered Plaintiff's arguments in his Second Response that his freedom of religion is being unlawfully constrained by the State and jail staff. None of these arguments, however, changes the excellent analysis provided in the Report. As a result, the Court holds Plaintiff's Second Response to be without merit.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court Bogle's motion to dismiss is **GRANTED**, and Bogle is **DISMISSED** as a party Defendant in this case.

IT IS SO ORDERED.

Signed this 30th day of October, 2017, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
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.