Conlin v. Brisher et al Doc. 17

UNITED STATES DISTRICT COURT	EASTERN DISTRICT OF TEXAS
JEREMY LEE CONLIN,	
Plaintiff,	8 8 8
versus	§ CIVIL ACTION NO. 1:08-CV-81
V.L. BRISHER, et al.,	8 8 8
Defendants.	§ \$

MEMORANDUM ORDER PARTIALLY ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Jeremy Lee Conlin, an inmate confined at the Stiles Unit, proceeding *pro se*, brought this lawsuit against V.L. Brisher, Nathaniel Quarterman, and Christina Melton Crain.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed without prejudice pursuant to plaintiff's motion to dismiss.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

In his objections, plaintiff requests that court adopt in part his request dismiss this case without prejudice. Plaintiff requests that exhibits filed in this action be transferred to another pending action styled *Conlin v. Shields*, civil action number 1:08cv74. Plaintiff refers to exhibits to which Judge Atlas referenced in her opinion transferring this action to this court. The magistrate judge attempted to identify the documents; however, plaintiff disagrees with the magistrate judge's determination. It appears to the court that the documents requested are docketed as docket entry #3; however, to avoid any confusion, the court will direct the Clerk of

Court to copy all documents transferred to this court from the United States District Court for the

Southern District of Texas and file them in civil action number 1:08cv74, retaining any originals

in this action.

Additionally, Plaintiff objects to the failure to recommend refunding an initial partial filing

fee paid to the United States District Court for the Southern District of Texas. After careful

consideration, the court concludes Plaintiff's objections are without merit. As the magistrate judge

correctly determined, this court is without jurisdiction to order the Southern District to refund such

payment to Plaintiff. See 28 U.S.C. §§ 1914, 1915. Therefore, a recommendation from this court

to refund the money, as plaintiff requests, would be improper. Accordingly, Plaintiff's objections

should be overruled.

ORDER

For the reasons set forth above, Plaintiff's objections are partially **OVERRULED** and the

report of the magistrate judge is ADOPTED to the extent it recommends dismissal without

prejudice. The Clerk of Court is **DIRECTED** copy all documents transferred to this court from

the United States District Court for the Southern District of Texas and file them in civil action

number 1:08cv74, retaining any originals in this action. If plaintiff wishes to pursue the above-

styled action, he may reinstate this case on the court's active docket by filing a request within

thirty (30) days from the date of this order. A final judgment will be entered in this case in

accordance with the magistrate judge's recommendation.

SIGNED at Sherman, Texas, this 10th day of September, 2008.

MARCIA A. CRONE

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UNITED STATES DISTRICT JUDGE

2