Bonner v. Dickerson et al Doc. 10

| UNITED STATES DISTRICT COURT | EASTERN DISTRICT OF TEXAS |
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| THOMAS F. BONNER, | |
| Plaintiff, | 8 8 8 |
| versus | § CIVIL ACTION NO. 1:09-CV-214 |
| KENT DICKERSON, et al., | \$ \$ 8 |
| Defendants. | 8 8 |

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Thomas F. Bonner, an inmate confined at the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this lawsuit pursuant to 42 U.S.C. § 1983.

The court referred this matter to the Honorable Earl S. Hines, 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 28 U.S.C. § 1915(g).

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). After careful consideration, the court concludes Plaintiff's objections are without merit.

Plaintiff does not contest the magistrate judge's determination that he had three prior actions dismissed as frivolous or for failure to state a claim upon which relief may be granted. Instead, Plaintiff states he is not proceeding *in forma pauperis* in this action.¹ Plaintiff states he

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Plaintiff also states his life is in danger. However, as the magistrate judge correctly determined, the factual allegations set forth in the complaint fail to demonstrate plaintiff was in imminent danger of serious physical injury at the time he filed the complaint. See Banos v. O'Guin, 144 F.3d 883, 884 (5th Cir. 1998).

would like to have mailing information so that he can contact his family so they may arrange to pay the filing fee.

Because Plaintiff is not proceeding *in forma pauperis*, § 1915(g) is not applicable to this case. However, the clerk of court is required to collect the full \$350 filing fee before accepting a complaint for filing in cases where the plaintiff is not authorized to proceed without prepayment of fees pursuant to 28 U.S.C. § 1915. *See* Local Rule CV-4(a). While Plaintiff states he wants to pay the filing fee, the fact remains that he did not pay the filing fee when he filed the complaint. Further, Plaintiff has failed to exercise due diligence during the time this action has been pending. Accordingly, the complaint should be dismissed without prejudice as improvidently filed.

ORDER

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED** to the extent it recommends dismissal without prejudice. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 21st day of July, 2009.

MARCIA A. CRONE UNITED STATES DISTRICT JUDGE

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