

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DAVID WEBB §
VS. § CIVIL ACTION NO. 1:09-CV-738
BRAD LIVINGSTON, ET AL. §

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

Plaintiff David Webb, a prisoner confined at the Larry Gist State Jail, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Brad Livingston and R. Goings.

The court ordered that this matter be referred 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 has filed a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends granting defendants' motion for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Plaintiff did not object to the Report and Recommendation, but he filed a motion to dismiss the action voluntarily. After due consideration, the court is of the opinion that plaintiff's motion should be granted, and the case should be dismissed pursuant to Federal Rule of Civil Procedure 41(a).

ORDER

Accordingly, plaintiff's motion to dismiss the case is **GRANTED**. The report of the magistrate judge is partially **ADOPTED** to the extent it recommends dismissing the action. A final judgment will be entered dismissing the action without prejudice in accordance with this Memorandum Order.

So **ORDERED** and **SIGNED** this **25** day of **March, 2010**.



Ron Clark, United States District Judge