

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

**KIMOTHY RAY FLOWERS,
Individually, and as next friend of
M.S.F.,**

V.

**PORT ARTHUR INDEPENDENT
SCHOOL DISTRICT**

§
§
§
§
§
§
§
§

CASE NO. 1:14-CV-210

**ORDER OF DISMISSAL AND ADOPTING
REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

The court referred this case to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration. The magistrate judge submitted a report and recommendation on the defendant's motion to dismiss. Judge Giblin recommended that the Court grant that motion and dismiss the plaintiff's claims for failure to state a claim upon which relief can be granted.

The plaintiff filed objections to Judge Giblin's report. In his objections, the plaintiff contends that Judge Giblin is biased and exceeded his judicial authority in making his recommendation. Plaintiff further maintains that his due process rights have been violated. He also reiterates many of the same arguments he made in the numerous other filings before the Court. What he does not do, however, is point to specific findings of fact and conclusions of law set forth in Judge Giblin's detailed report. The plaintiff offers no supporting precedent or substantive argument on the legal issues addressed in the report. Judge Giblin conducted a thorough analysis of the relevant standard under Federal Rule of Civil Procedure 12(b). He also offered support for his conclusion that the plaintiff cannot represent his minor daughter while proceeding *pro se*. Finally, Judge Giblin discussed the applicable law under 42 U.S.C. § 1983 specific to the type of plaintiff's claim and the

qualified immunity issues and properly analyzed the case pled by plaintiff under these standards. Plaintiff failed to specifically respond on any of these legal issues both at the time the motion to dismiss was pending and also in his objections. By failing to specifically object to the magistrate judge's findings and legal conclusions, the plaintiff has in turn failed to establish how Judge Giblin erred. The plaintiff's objections consist solely of unsubstantiated attacks on the Court's credibility and personal opinions about the status of his claims. This is insufficient to overturn Judge Giblin's report.

Pursuant to the plaintiff's objections and in accordance with 28 U.S.C. § 636(b)(1), the court conducted a *de novo* review of the magistrate judge's findings, the record, the plaintiff's objections, and the applicable law in this proceeding. After review, the court finds that Judge Giblin's findings and recommendations should be accepted. The plaintiff's objections [Doc. #35] are overruled. The court **ORDERS** that the report and recommendation [Doc. #34] on the defendant's motion to dismiss is **ADOPTED**. The court further **ORDERS** that defendant's motion to dismiss [Doc. #23] is **GRANTED**. The plaintiff's federal constitutional causes of action are dismissed in their entirety, with prejudice, for failure to state a claim upon which relief can be granted. The claims asserted on behalf of the plaintiff's minor daughter and plaintiff's remaining state law claims are dismissed without prejudice. The Clerk is directed to **CLOSE** this case and all pending motions not addressed herein are **DENIED as MOOT**. This constitutes a final judgment for purposes of appeal.

So **ORDERED** and **SIGNED** this **30** day of **March, 2015**.



Ron Clark, United States District Judge