

****NOT FOR PRINTED PUBLICATION****
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CAROL PASELK

Plaintiff,

V.

STATE OF TEXAS, ET AL.

Defendants.

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CASE NO. 4:12-CV-754
Judge Clark/Judge Mazzant

ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On October 1, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Plaintiff's *pro se* Motion to Proceed In Forma Pauperis [Doc. #333] be denied [Doc. #334]. On November 7, 2013, Plaintiff filed objections [Doc. #336]. No response was filed by any defendant.

Plaintiff, *pro se*, filed this case against ninety-two defendants. The Magistrate Judge entered a forty-five page report and recommendation that addressed all motions to dismiss pending at that time. The Magistrate Judge recommended that all motions to dismiss be granted. The Magistrate Judge also recommend dismissal of all claims against all named defendants. In making that recommendation, the Magistrate Judge acknowledged that due to the court's caseload, a proper pre-screening was not done in this case and that the court should never have allowed service on all of the defendants. The Magistrate Judge determined that, after review of

the amended complaint, there were no plausible claims against any defendant and that the entire case should be dismissed with prejudice.

On June 27, 2013, Plaintiff filed twenty-eight pages of objections to the recommended dismissal of this case. It was clear to the court that Plaintiff feels that she has been wronged by everything that happened to her in connection with the seizure of her horses, but the court noted that her feeling does not make her claims appropriate for federal court. Plaintiff's amended complaint illustrated that Plaintiff was actually trying to challenge everything that happened to her with regard to her prior criminal proceedings and the seizure of the horses. The Magistrate Judge correctly found that this court has no jurisdiction to address these matters. Plaintiff was convicted, the convictions have not been overturned, and she cannot sue private individuals under 42 U.S.C. § 1983 based upon the facts she has alleged. After the court stripped away all of the allegations regarding her prior criminal cases and the seizure of the animals, the court found that Plaintiff did not have any possible plausible claim that would remain against Defendants.

In the matter now before the court, Plaintiff seeks leave to proceed on her appeal without payment of any fees. The Magistrate Judge determined that Plaintiff lacks the financial resources to prosecute her appeal. Despite that finding, the Magistrate Judge found that Plaintiff had an obligation to demonstrate that her requested appeal raises non-frivolous issues for appeal. The Magistrate Judge was correct that Plaintiff made no attempt to assert any non-frivolous issues for appeal. The Magistrate Judge determined that her appeal was not taken in good faith.

When there is a challenge to the finding of a lack of good faith, the Fifth Circuit's inquiry into a litigant's good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

The Magistrate Judge was correct in finding that the appeal was not taken in good faith based upon what was submitted by Plaintiff. Her objections, which contain forty-one pages of assertions in the case, also fail to demonstrate that the appeal is in good faith. Although the court has sympathy for Plaintiff's belief that she was wronged by the system, that fact alone is not sufficient for her to show that she any non-frivolous claims. The Magistrate Judge spent considerable time reviewing the various motions to dismiss and the claims being asserted in this case and correctly determined that there were no plausible claims. Her objections merely recite again all of the wrongs she believes have been inflicted upon her, but at no time has she demonstrated that there is a plausible claim that allows her a vehicle to properly voice these issues in this court. The court agrees with the Magistrate Judge that Plaintiff's appeal is not taken in good faith and her motion be denied.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by Plaintiff, this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

It is, therefore, **ORDERED** that Plaintiff's *pro se* Motion to Proceed In Forma Pauperis [Doc. #333] is **DENIED**.

So **ORDERED** and **SIGNED** this **4** day of **January, 2014**.



Ron Clark, United States District Judge