

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

RICHARD G. KELLEY	§	
	§	
V.	§	No. 5:13CV27
	§	
SHARON GUSTAFSON, DENNIS GUSTAFSON, AND ANGIE BUFFINGTON, D.B.A. AR-TEX TAXI & COURIER SERVICES	§ § § §	

MEMORANDUM ORDER
ADOPTING REPORT AND RECOMMENDATION

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. Richard G. Kelley (“Plaintiff”), proceeding pro se, filed objections to the Report and Recommendation. The Court conducted a *de novo* review of the Magistrate Judge’s findings and conclusions.

On March 27, 2013, Plaintiff filed this action for unlawful discrimination under 42 U.S.C. §1981 and for violations of the Fair Labor Standards Act (“FLSA”) against Defendants Sharon Gustafson, Dennis Gustafson, and Angie Buffington d.b.a. Ar-Tex Taxi & Courier Services (“Defendants”). Defendants moved to dismiss, asserting they are not now nor have they ever done business as Ar-Tex Taxi & Courier Services. After ordering him to do so, Plaintiff filed a response to Defendants’ motion to dismiss. Plaintiff later filed a motion for partial summary judgment and a motion for entry of judgment as a matter of law. Approximately six weeks after Plaintiff’s motions became ripe for consideration, on December 17, 2013, Plaintiff filed a motion for recusal of the Magistrate Judge.

On January 3, 2014, the Magistrate Judge issued an Order denying Plaintiff's motion for recusal, finding Plaintiff's assertion insufficient to demonstrate that a reasonable person, knowing all the circumstances, would believe it improper for the Magistrate Judge to sit in this case. Plaintiff has not filed a motion for reconsideration of that order even though the Magistrate Judge specifically advised Plaintiff of his right to do so.

On January 3, 2014, after denying Plaintiff's motion for recusal, the Magistrate Judge issued a Report and Recommendation recommending Defendants' motion to dismiss and Plaintiff's motion for partial summary judgment be denied. Specifically, the Magistrate Judge ordered Plaintiff to amend his original complaint within thirty days, including the proper business name of Defendants.

The Magistrate Judge also recommended Plaintiff's motion for partial summary judgment and motion for entry of judgment be denied. Among other things, the Magistrate Judge stated the motions were premature as the case has not yet been set for a scheduling conference and no discovery order has been entered to govern this case.

In his objections, Plaintiff asserts the Magistrate Judge erred as follows: (1) she failed to recuse in response to Plaintiff's Motion for Recusal; (2) she erroneously concluded Defendants had created a genuine issue of material fact concerning Plaintiff's discriminatory failure to promote claim; and (3) she erroneously concluded Defendants had created a genuine issue of material fact concerning Plaintiff's FLSA claims. The Court considered all of Plaintiff's objections and agrees with the Magistrate Judge that Plaintiff's motion for partial summary judgment is premature. No scheduling order or discovery order has been entered in this case. Nor have the parties engaged in discovery on the substance of Plaintiff's claims. As such, Plaintiff's dispositive motions should be denied at this time.

The Court, having reviewed the relevant briefing, the Report and Recommendation, and Plaintiff's objections, is of the opinion the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is hereby


ORDERED that Defendants' Motion to Dismiss (Dkt. No. 7) is **DENIED** at this time. Plaintiff shall amend his complaint on or before February 7, 2014, including the proper business name of Defendants. The Court advises Plaintiff that failure to amend or failure to include the proper business name of Defendants may result in the dismissal of his cause of action. It is further

ORDERED that Plaintiff's Motion for Partial Summary Judgment (Dkt. No. 13) and Motion for Entry of Judgment as a Matter of Law on Plaintiff's Unopposed Motion for Partial Summary Judgment (Dkt. No. 14) are **DENIED**. It is further

ORDERED that Plaintiff's Motion for Extension of Time to File Objections (Dkt. No. 22) is **DENIED AS MOOT**.

It is SO ORDERED.

SIGNED this 28th day of January, 2014.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE