

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

GARY S. JOHNSON §
v. § CIVIL ACTION NO. 6:08cv264
ELMER BETWORTH, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Gary S. Johnson, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings, the Magistrate Judge issued a Report on July 9, 2008, recommending that the lawsuit be dismissed. The Magistrate Judge noted that Johnson had an extensive history of filing frivolous lawsuits and was consequently subject to the “three-strikes” bar of 28 U.S.C. §1915(g). In this case, Johnson did not pay the full filing fee or show that he was in imminent danger of serious physical injury, and so the Magistrate Judge recommended that the lawsuit be dismissed; the Magistrate Judge also recommended that if Johnson paid the full filing fee within 15 days after the date of entry of final judgment, the lawsuit be allowed to proceed as though the full fee had been paid from the outset.

Johnson received a copy of the Report on July 7, 2008, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court.

Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*). Johnson did file a motion for extension of time to pay the filing fee, asking for an additional 90 days until he could be released from prison.

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. While Johnson did not file a motion for leave to proceed *in forma pauperis*, such status is DENIED *sua sponte*. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the statutory \$350.00 filing fee. It is further

ORDERED that the Plaintiff's motion for extension of time (docket no. 6) is GRANTED and that should the Plaintiff pay the full filing fee within 90 days after the date of entry of final judgment in this case, the lawsuit shall be reopened and he shall be allowed to proceed in the lawsuit as through the full fee had been paid from the outset. Finally, it is

ORDERED that any and all other motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 10th day of September, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**