

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

EDWARD L. COOKSEY §
v. § CIVIL ACTION NO. 6:11cv444
JOHN RUPERT, ET AL. §

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

The Plaintiff Edward Cooksey, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. 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.

The Magistrate Judge ordered Cooksey to pay an initial partial filing fee of \$6.96, pursuant to 28 U.S.C. §1915(b). This sum was based upon Cooksey’s inmate trust account data sheet, which showed that he had received three separate deposits totalling \$315.96 over the preceding six months, an average of \$52.66 per month. He had maintained an average balance in his inmate trust account of \$34.84 over this period of time.

When Cooksey did not pay the fee, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. Cooksey filed a “declaration in support of motion for leave to proceed *in forma pauperis*,” which the Court construes as objections to the Report of the Magistrate Judge.

In his declaration, Cooksey first says that he has received no money over the past twelve months from any source whatsoever. He then says that he “only receives money maybe every

six months and it is in a very small amount.” He makes no mention of the sums of money which are shown on the inmate trust account data sheet which he filed, including one deposit of \$200.00 and one deposit of \$104.58. He did not furnish another inmate trust account data sheet and fails to verify his claim that he has no assets with which to pay the filing fee. Cooksey’s objections to the Report of the Magistrate Judge are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff’s objections are without merit. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 10) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. It is further

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

It is SO ORDERED.

SIGNED this 15th day of February, 2012.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE