

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

BOBBY E. BURTON JR. §
v. § CIVIL ACTION NO. 6:13cv488
WARDEN LARRY DOYLE §

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

The Plaintiff Bobby Burton, an inmate of the Texas Department of Criminal Justice, Correctional Institutions Division, 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.

The Magistrate Judge ordered Burton to pay an initial partial filing fee of \$2.67, as required by 28 U.S.C. §1915(b). The Magistrate Judge also ordered Burton to file an amended complaint setting out a short and plain statement of his claim. When Burton did not comply with either of these orders, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice. The incidents in the lawsuit appear to have occurred in the summer of 2011, meaning that a dismissal without prejudice could operate as a dismissal with prejudice because of the statute of limitations; accordingly, the Magistrate Judge recommended that the lawsuit be dismissed without prejudice, with the statute of limitations suspended for a period of 60 days following the entry of final judgment. The Magistrate Judge specified that this suspension of the limitations period would only affect claims not barred by limitations as of June 3, 2013, the date that the original complaint was signed.

A copy of the Magistrate Judge's Report was sent to Burton at his last known address, return receipt requested, but no objections have been received; 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*).

The Court has reviewed 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. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. [11](#)) 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 the statute of limitations on the claims raised in this lawsuit is hereby SUSPENDED for a period of sixty days following the date of entry of final judgment in this case. The suspension of the statute of limitations will not affect any claims which were already barred by the operation of that statute at the time that this lawsuit was signed, on June 3, 2011; such claims would remain barred regardless of any suspension of the limitations period. Finally, it is

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

So ORDERED and SIGNED this 7th day of October, 2013.

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

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**