

or he received permission from the Court. See McCain v. Scott, civil action no. 6:97cv662 (E.D.Tex., June 22, 1997); McCain v. Becraft, cause no. 6:96mc212 (E.D.Tex., October 23, 1996). McCain has not shown that these sanctions have been satisfied nor that he received permission from the Court to file the present lawsuit.

After review of the pleadings, the Magistrate Judge issued a Report recommending that McCain's *in forma pauperis* status be revoked and that the lawsuit be dismissed. The Magistrate Judge observed that because McCain had filed at least three previous lawsuits or appeals which had been dismissed as frivolous or for failure to state a claim, he is subject to the provisions of 28 U.S.C. §1915(g). That statute provides that inmates who have filed at least three previous lawsuits or appeals which have been dismissed under 28 U.S.C. §1915(g) cannot proceed under the *in forma pauperis* statute unless they show that they are in imminent danger of serious physical injury.

In the present case, the Magistrate Judge concluded that McCain failed to show that he was in imminent danger of serious physical injury as of the time that the lawsuit was filed. The Magistrate Judge also observed that McCain failed to show that the sanctions imposed against him had been satisfied. Hence, the Magistrate Judge recommended that the lawsuit be dismissed.

McCain received a copy of the Magistrate Judge's Report on July 23, 2013, 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*).

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 (docket no. 9) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff Phillip McCain's *in forma pauperis* status is hereby REVOKED. 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 filing fee. It is further

ORDERED that should the Plaintiff pay the full filing fee within 15 days after the date of entry of final judgment in this case, he shall be allowed to proceed in the lawsuit as though the full fee of \$400.00 was paid from the outset. Such payment of the filing fee would not affect a frivolousness analysis, nor does it alter McCain's obligation to satisfy the sanctions imposed against him or to obtain permission from a judicial officer of the Court in order to proceed with his lawsuit. Finally, it is

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

So ORDERED and SIGNED this 30th day of August, 2013.

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

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**