

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

BEN RAY PEEK	§	
v.	§	CIVIL ACTION NO. 6:16cv378
RED RIVER COUNTY, ET AL.	§	

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

The Plaintiff Ben Peek filed this lawsuit under 42 U.S.C. §1983 complaining of alleged violations of the constitutional rights of his son. 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. Peek lists Red River County, the City of Clarksville, Sheriff Jimmy Caldwell, and Police Chief Brandon Harbison as defendants; however, he states that “actually, the lawsuit is against the public (police) review board, not really an individual.”

Peek stated that he wishes to see justice done for his son, who has been incarcerated for eight and a half years. He added that “there are a number of people who also need to see justice done,” although he concedes he has no proof of their circumstances. He attached materials discussing the trial of his son Brent Peek. Texas prison records show Brent Peek is serving a 41 year sentence for intoxication manslaughter, with four previous felony convictions for driving while intoxicated.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed. The Magistrate Judge observed that persons claiming a deprivation of constitutional rights must show a deprivation of their personal rights, meaning that Ben Peek cannot bring suit on behalf of his son. The Magistrate Judge further stated that the lawsuit stems from the criminal prosecution of Brent Peek and a civil rights lawsuit based on a criminal prosecution cannot

be pursued until the conviction or sentence is reversed on direct appeal, expunged by executive order, declared invalid by an authorized state tribunal, or called into question by a federal court's issuance of a writ of habeas corpus. Because no such showing was made, the Magistrate Judge stated the lawsuit may be dismissed on this basis as well.

Peek received a copy of this Report on May 19, 2016. He telephoned the U.S. District Clerk for the Eastern District of Texas to state that he had some medical issues and has been in the hospital, and that is why he had not filed objections to the R&R. A notation on the docket shows Peek was advised to explain this in writing and send it to the Court as soon as possible. On-line records show Peek passed away in September of 2016. His executors have not contacted the Court or otherwise expressed a desire to pursue the lawsuit.

Because no objections were filed to the Report, the parties are 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 determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 8) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil action is **DISMISSED WITH PREJUDICE** for purposes of proceeding *in forma pauperis* as frivolous and for failure to state a claim upon which relief may be granted. The dismissal of this lawsuit is without prejudice to Brent Peek's right to challenge his conviction through any lawful means, and without prejudice to Brent Peek's right to

file a civil rights lawsuit concerning his conviction in the event this conviction is reversed, expunged, or otherwise set aside. It is further

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

So Ordered and Signed

Mar 3, 2017



Ron Clark, United States District Judge