

FILED

NOVEMBER 21, 2008

**KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURT**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

MARCOS ORTIZ, PRO SE,	§	
A.K.A. MARCOS LOPEZ ORTIZ,	§	
TDCJ-CID # 1049113,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:08-CV-0172
	§	
N. QUARTERMAN, M. SIZEMORE, and	§	
NORTHWEST TEXAS HOSPITAL,	§	
	§	
Defendants.	§	

ORDER DENYING PAUPER STATUS AND ORDER OF DISMISSAL

Plaintiff MARCOS ORTIZ, also known as MARCOS LOPEZ ORTIZ, acting pro se and while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-named defendants and requesting leave to proceed *in forma pauperis*.

On October 23, 2008, a Report and Recommendation was issued based upon a review of plaintiff's litigation history and his pleadings in this cause by the United States Magistrate Judge recommending that pauper status be denied and that the instant cause be dismissed without prejudice for failure to pay the filing fee. Plaintiff was instructed he had fourteen days in which to object and that payment of the filing fee during that period would result in the automatic withdrawal of the Report and Recommendation.

Plaintiff filed his objections on November 12, 2008. Plaintiff argues he was in imminent danger at the time he filed suit. He alleges the Clements Unit is a specially dangerous unit because it houses mentally disturbed violent inmates who are unsupervised and that defendant

SIZEMORE transferred him there for that reason. Plaintiff claims defendant QUARTERMAN has allowed the Clements Unit to become a slaughterhouse by failing to supervise it.

The only fact plaintiff alleges to support these allegations of danger is that he was attacked by another inmate while at the Clements Unit when he restrained that inmate from beating an unconscious guard. A single incident is insufficient to support plaintiff's claim that the unit as a whole is more dangerous than other units or that he was transferred there for that reason. The Court notes that the aggression was initially directed at a guard and transferred to plaintiff only when he interfered, holding the attacking inmate off the unconscious guard. As to plaintiff's claims against defendant NORTHWEST TEXAS HOSPITAL, plaintiff does not allege facts showing that, at the time he filed the instant lawsuit, he was in imminent danger of serious physical injury flowing from any act or omission by this defendant.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the Objections filed by the plaintiff.

The Court is of the opinion that the objections of the plaintiff should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court, as supplemented herein.

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge, as supplemented herein.

IT IS THEREFORE ORDERED that plaintiff's request to proceed in forma pauperis is DENIED, and the Civil Rights Complaint filed pursuant to Title 42, United States Code, Section 1983, by plaintiff MARCOS ORTIZ is DISMISSED WITHOUT PREJUDICE TO REFILE WITH PREPAYMENT OF THE FILING FEE. 28 U.S.C. § 1915(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Any pending motions are DENIED.

The Clerk shall send a copy of this Order to plaintiff and to any attorney of record.

IT IS SO ORDERED.

ENTERED this 21st day of November, 2008.

/s/ Mary Lou Robinson
MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE