

United States District Court
Southern District of Texas

ENTERED

July 24, 2017

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

LAKEITH RAQIB AMIR-SHARIF,

Plaintiff,

VS.

TDCJ, *et al*,

Defendants.

§
§
§
§
§
§
§
§

CIVIL NO. 2:16-CV-366

ORDER

Plaintiff Lakeith Raqib Amir-Sharif (“Amir-Sharif”) is an inmate in the Texas Department of Criminal Justice, Criminal Institutions Division (“TDCJ-CID”), and currently is incarcerated at the Ramsey II Prison Unit in Rosharon, Texas. He filed his initial 42 U.S.C. § 1983 complaint against the TDCJ-CID Defendants in state court on April 6, 2016, seeking injunctive and declaratory relief, as well as damages. *See* Dkt. No. 1. His complaint makes allegations as to actions that occurred at the Garza West unit in Beeville, Texas, and accordingly, Amir-Sharif brought his state court lawsuit in the 36th Judicial District of Bee County, Texas, where he attempted to proceed *in forma pauperis*. Dkt. No. 13 at n.1. Amir-Sharif filed a first amended complaint in state court on May 27, 2016, which the Magistrate Judge to whom this case was referred pursuant to 28 U.S.C. § 636(b) recommends should be considered the live pleading in this case. *Id.* at 9.

Defendants removed this action to federal court on August 29, 2016, Dkt. No. 1, and filed a motion to dismiss on September 1, 2016, Dkt. No. 2, alleging that Amir-Sharif’s claims should be dismissed pursuant to the three strikes rule established at 28 U.S.C. § 1915(g). Amir-Sharif responded to the motion to dismiss, Dkt. No. 3, and subsequently filed several motions effectively requesting remand of this action to state court, Dkt. Nos. 4, 5, 7, 11, and 12. Defendants timely responded to these motions, and oppose remand. Dkt. No. 6.

The Court has before it now Amir-Sharif's original and first amended complaints, Dkt. No. 1-2 and Dkt. No. 6-1; Defendants' motion to dismiss, Dkt. No. 2; Amir-Sharif's motions to remand, Dkt. Nos. 4, 5, 7, 11, and 12; and the Memorandum and Recommendations of the Magistrate Judge to whom this case was referred ("M&R"), Dkt. No. 13. The deadline to file objections to the Magistrate Judge's proposed findings and recommendations has passed, and the docket sheet shows that no objections have been filed. *See* 28 U.S.C. § 636(b)(1) (setting 14-day deadline to file objections); Fed. R. Civ. P. 72(b)(2) (same); *see also* M&R at 16 (advising parties of 14-day deadline).

The M&R, *inter alia*, recommends that the Court find Amir-Sharif's first amended complaint is the live pleading in this action and interpret this pleading as asserting only state-law causes of action. *See* Dkt. No. 13. On this basis, the M&R recommends that this Court grant Amir-Sharif's motions to remand this case to state court. *Id.* at 9. The M&R also addresses Defendants' motion to dismiss, Dkt. No. 2. This Court will not address this motion to dismiss, as it finds that: (i) Amir-Sharif's first amended complaint is indeed his live pleading, (ii) this complaint states only state-law causes of action, and (iii) accordingly, this Court is without subject matter jurisdiction to hear Amir-Sharif's claims, such that remand of this case to state court is required.

After independently reviewing the record and considering the applicable law, the Court **ADOPTS IN PART** the Magistrate Judge's proposed findings and recommendations as described herein; **GRANTS** Amir-Sharif's motions to remand, Dkt. Nos. 4, 5, 7, 11, and 12; and **ORDERS** this suit remanded to the 36th Judicial District of Bee County, Texas.

It is so ORDERED.

SIGNED this 24th day of July, 2017.



Hilda Tagle
Senior United States District Judge