Burke v. Menard Doc. 15

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

JAMES T. BURKE, :

Plaintiff,

v. : File No. 1:16-cv-00052-jgm-jmc

:

LISA MENARD, Commissioner, Vermont Department of Corrections, RALPH CHERRY, Superintendent,

N.L.C.F. - Baldwin, MI,

Defendants.

## **ORDER**

The Magistrate Judge's Report and Recommendation was filed June 1, 2016. (Doc. 14.) After <u>de novo</u> review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. <u>See</u> 28 U.S.C. § 636(b)(1).

Defendant Lisa Menard's Motion to Dismiss for failure to state a claim upon which relief can be granted (Doc. 13) is GRANTED. Leave to amend the Complaint is DENIED because Plaintiff's claims fail in substance and any amendment would be futile. The Court refrains from exercising supplemental jurisdiction over any potential state law claims raised in Plaintiff's Complaint.

It is hereby ORDERED that, on or before 20 days from the date hereof, Plaintiff shall file proof of service of the Complaint as to Defendant Ralph Cherry,

Superintendent, North Lake Correctional Facility, Baldwin, Michigan. Failure to do so will result in the dismissal without prejudice of all claims against him.

It is further certified that any appeal taken <u>in forma pauperis</u> from this Order would not be taken in good faith because such an appeal would be frivolous. <u>See</u> 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 6<sup>th</sup> day of July, 2016.

/s/ J. Garvan Murtha

Honorable J. Garvan Murtha United States District Judge