

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

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DARREN BRADY,)
)
Plaintiff,)
)
v.)
)
ANDREW PALLITO,)
Commissioner of Vermont)
Department of Corrections,)
)
Defendant.)

Case No. 5:12-cv-41

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

(Docs. 15, 16)

This matter came before the court for a review of the Magistrate Judge's May 3, 2013 Report and Recommendation ("R & R") recommending the court grant Defendant Andrew Pallito's motion to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and for failure to state a cause of action under Fed. R. Civ. P. 12(b)(6) filed by Defendant. (Doc. 15.) Neither party has objected to the R & R, and the deadline for doing so has expired.

Plaintiff Darren Brady initially filed a complaint against the Chittenden Correctional Facility, claiming violations of his federal constitutional rights under the Americans with Disabilities Act of 1990 ("ADA"). Defendant filed a motion to dismiss the claim which was granted. After leave was granted to amend his complaint, Plaintiff abandoned his federal claims and asserts now only a state law tort claim against Defendant Pallito. Defendant has moved to dismiss this claim. Plaintiff has not opposed dismissal or otherwise responded to the pending motion to dismiss.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879 (1974).

In his ten page R & R, the Magistrate Judge carefully reviewed the factual record and the pending motions and concluded that Plaintiff's claim should be dismissed because, in light of Plaintiff's abandonment of his federal claims, the court no longer has subject matter jurisdiction and because Defendant has absolute immunity for the claims alleged in this case. The Magistrate Judge further found that Defendant's lack of personal involvement in the alleged constitutional violations and the doctrine of sovereign immunity provided further grounds for dismissal. Based upon these conclusions, the Magistrate Judge recommended that Plaintiff not be permitted to amend his complaint as he has already been permitted to do so once and further amendment would be futile.

The court agrees with the Magistrate Judge's conclusions. For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R as the court's Order and Opinion, and GRANTS Defendant's motion to dismiss. (Doc. 15) This case is hereby DISMISSED without prejudice.

SO ORDERED.

Dated at Rutland, in the District of Vermont, this 11th day of June, 2013.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

Christina Reiss, Chief Judge
United States District Court