

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

LAWRENCE SCIBLE,

Plaintiff,

v.

Civil Action No. 1:08CV100
(Judge Keeley)

KAREN STEWARD, WILLIAM ANDERSON,
ROBERT HILL, JOHN DOE, DONNIE
SPRINGSTON, WILLIAM FOX, JIM
RUBENSTEIN, TERESA WAID, ROBIN
MILLER, SANDY TIEGE, JAMES GRAGG,
BRIAN SCOTT, WILLIAM HALE and THE
WEST VIRGINIA DIVISION OF CORRECTIONS,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On April 7, 2008, pro se plaintiff Lawrence Scible ("Scible") filed a complaint and motion for preliminary injunction pursuant to 42 U.S.C. § 1983. In the complaint, Scible alleges that the defendants have violated his constitutional rights, including his freedom of speech, by punishing him for alleged violations of Department of Corrections' policies that he contends are vague and ambiguous. The Court referred this matter to United States Magistrate Judge John S. Kaul for initial screening and a report and recommendation in accordance with 28 U.S.C. § 1915A and Local Rule of Prisoner Litigation 83.02.

On April 24, 2008, Magistrate Judge Kaul conducted a preliminary review of the case and determined that summary dismissal was not warranted. Accordingly, he directed the United States Marshal's Service to serve the defendants.

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On April 30, 2008, Scible filed an addendum to his complaint, and also filed a motion for summary judgment. On May 21, 2008, the defendants responded to the summary judgment motion, and also filed their own motion to dismiss. Scible filed a response on June 6, 2008 to the motion to dismiss, to which the defendants replied on June 13, 2008. Then, on August 21, 2008, Scible filed a supplement in support of his complaint.

On December 22, 2008, Magistrate Judge Kaul issued a Report and Recommendation ("R&R") recommending that Scible's motions for summary judgment and a preliminary injunction be denied. He further recommended that Scible's addendum to the complaint be construed as a motion to amend and be denied. He recommended that the defendants' motion to dismiss be granted-in-part and denied-in-part. Finally, the Magistrate Judge recommended that defendants Springston, Miller, Tiege, Gragg and Scott be dismissed without prejudice, and defendants Fox, Waid, Rubenstein and the West Virginia Division of Corrections be dismissed with prejudice.

The R&R also specifically warned Scible that failure to object to the recommendations within ten days of receipt of the R&R would result in the waiver of his appellate rights on this issue. Nevertheless, no objections have been filed.¹

¹ Scible's failure to object to the Report and Recommendation not only waives his appellate rights in this matter,

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Consequently, the Court **ADOPTS** the R&R (dkt. no. 48) in its entirety and **ORDERS** as follows:

- Scible's motion for preliminary injunction (dkt. no. 2) is **DENIED**;
- Scible's addendum to his Complaint (dkt. no. 19) is construed as a motion to amend and is **DENIED**;
- Scible's motion for summary judgment (dkt. no. 20) is **DENIED**;
- The defendants' motion to dismiss (dkt. no. 33) is **GRANTED-IN-PART** and **DENIED-IN-PART**. Specifically, the defendants' motion to dismiss is granted to the extent that Scible's First Amendment claim with regard to disciplinary action SMC-07-0389-H is **DISMISSED WITH PREJUDICE** for failure to state a claim. Scible's First Amendment claim with regard to disciplinary action HCC-08-0338-T and his retaliatory transfer claim are **DISMISSED WITHOUT PREJUDICE**, for failure to exhaust. However, the defendants' motion to dismiss is denied to the extent that it seeks to dismiss Scible's claim that disciplinary action SMC-07-0389-H is vague and ambiguous as applied to the particular circumstances of this case and that his First Amendment rights were violated with respect to disciplinary actions SMC-07-0413-H and SMC-07-0425-H;
- Defendants Springston, Miller, Tiege, Gragg and Scott are **DISMISSED WITHOUT PREJUDICE** from this action; and
- Defendants Fox, Waid, Rubenstein and the West Virginia Division of Corrections are **DISMISSED WITH PREJUDICE** from this action.

but also relieves the Court of any obligation to conduct a de novo review of the issues presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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Because several issues remain in this case, pursuant to 28 U.S.C. § 636, the action is referred back to Magistrate Judge Kaul for further proceedings.

It is so **ORDERED**.

The Court directs the Clerk to transmit copies of this Order to counsel of record, and to the pro se plaintiff, by certified mail, return receipt requested.

Dated: January 13, 2009.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE