

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

D. VINCENT CAMASTRO,

Plaintiff,

v.

Civil Action No. 5:12CV157
(STAMP)

SCOTT R. SMITH,
Prosecuting Attorney,
KEITH C. GAMBLE,
D. LUKE FURBEE,
Special Prosecuting Attorney,
HONORABLE JAMES P. MAZZONE,
HONORABLE ARTHUR M. RECHT,
CORPORAL J.E. DEAN,
CARL WORTHY E. PAUL, JR.,
Special Prosecuting Attorney,
and OHIO COUNTY, WEST VIRGINIA,
individually and collectively,

Defendants.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Background

The pro se¹ plaintiff filed a complaint on October 18, 2012 alleging a conspiracy between local judges, prosecutors, police, and lawyers aimed at depriving him of access to the courts and violating his civil rights. The same day the complaint was filed, the Clerk of Court sent the plaintiff a notice informing him to file in forma pauperis or to pay a \$350.00 filing fee. On August 19, 2013, this Court dismissed all defendants except defendant

¹Pro se - "One who represents oneself in a court proceeding without the assistance of a lawyer." Black's Law Dictionary 1341 (9th ed. 2009).

Corporal J.E. Dean ("Dean") and also directed the Clerk to serve a summons on defendant Dean. The Clerk was unable to do so because the plaintiff had not paid a filing fee and had not filed in forma pauperis.

The plaintiff was sent an order to correct deficient pleading. However, no filings were received from the plaintiff. United States Magistrate Judge James E. Seibert then issued an order to show cause on September 11, 2013. On September 19, 2013, the magistrate judge received a letter from the plaintiff stating that he would like the case to be dismissed. Based on that information, the magistrate judge issued a report and recommendation on September 20, 2013 recommending that the case be dismissed. The parties were informed that they had fourteen days within receipt of the recommendation to file written objections with this Court and that failure to do so would waive their right to appeal. Neither party filed objections.

For the reasons set forth below, this Court adopts and affirms the magistrate judge's report and recommendation in its entirety.

II. Applicable Law

As there were no objections filed to the magistrate judge's recommendation, the findings and recommendation will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

III. Discussion

There are no objections from the plaintiff to dismissal of this case. The plaintiff stated in his September 19, 2013 letter that he did not file this lawsuit but instead Greg Givens and Carol Pizzuto, acquaintances of the plaintiff, had filed the lawsuit. Further, the plaintiff stated that he was told that his complaint would be automatically dismissed if he did not pay a filing fee.

This Court agrees with the magistrate judge that this case should be dismissed. The magistrate judge's findings that the plaintiff does not wish to continue this lawsuit and that the plaintiff has failed to pay filing fees, or in the alternative file as a pauper, was not in clear error. Accordingly, this Court will dismiss this action.

IV. Conclusion

Accordingly, after a review for clear error, the report and recommendation of the magistrate judge is AFFIRMED and ADOPTED in its entirety. It is further ORDERED that this case be DISMISSED WITH PREJUDICE and STRICKEN from the active docket of this Court.

Finally, this Court finds that the plaintiff was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action would result in a waiver of appellate rights. Because the plaintiff has failed to object, he has waived his right to seek appellate review of this

matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se plaintiff and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: October 9, 2013

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE