

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

HERMAN MAJORS,

Plaintiff,

v.

Civil Action No. 5:17CV180
(STAMP)

UNITED STATES OF AMERICA,
UNITED STATES ATTORNEY GENERAL,
JAMES RICHARD WHITSETT, DEA,
DRUG ENFORCEMENT ADMINISTRATION,
SUNNY A.M. KOSHY, AUSA and
U.S. MARSHAL SERVICE,

Defendants.

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

I. Background

The pro se¹ plaintiff, Herman Majors, initiated this case by filing a complaint in the United States District Court for the Middle District of Tennessee, pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671, et seq. The case was transferred to this Court because the amended complaint deals only with a medical claim arising out of events at USP-Hazelton, which is located in Bruceton Mills, West Virginia. Once the transfer to this Court was completed, the civil action was referred to United States Magistrate Judge James E. Seibert for initial review and report and recommendation pursuant to Local Rule of Prisoner

¹Pro se describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1416 (10th ed. 2014).

Litigation 2. This Court then issued a notice of deficient pleading (ECF No. 19) and the plaintiff responded by filing his amended complaint on the court-approved form (ECF No. 21).

In his amended complaint, the plaintiff alleges that medical personnel for the Federal Bureau of Prisons ("BOP") have denied him adequate medical treatment. The plaintiff alleges that these actions by the medical personnel have violated his Eighth Amendment rights and the Americans with Disabilities Act ("ADA"). For relief, the plaintiff seeks \$100,000,000.00 in compensatory damages.

The magistrate judge then entered a report and recommendation recommending that this Court dismiss the plaintiff's claim without prejudice. The magistrate judge advised the parties that, pursuant to 28 U.S.C. § 636(b)(1)(C), any party may file written objections to his proposed findings and recommendations within 14 days after being served a copy of the report and recommendation. The plaintiff filed timely objections. For the reasons set forth below, this Court affirms and adopts the magistrate judge's report and recommendation in its entirety.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. Because

objections have been filed in this case, this Court will undertake a de novo review.

III. Discussion

In his report and recommendations, the magistrate judge found that, under the Prison Litigation Reform Act of 1995 ("PLRA"), the plaintiff may not proceed without prepayment of the \$400.00 filing fee. ECF No. 25 at 3-4. Under the PLRA, a prisoner may not proceed in forma pauperis if they have brought three or more actions which were each "dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Here, the plaintiff concedes that he has previously brought four cases that were dismissed as frivolous. ECF No. 25 at 4. Although the magistrate judge found that the plaintiff's allegations "might support a finding of imminent physical injury," a FTCA claim can only bring relief in the form of monetary damages. ECF No. 25 at 4 (citing Peck v. Blessing, No. 05-0960 SC, 2006 WL 213736 (N.D. Cal. Jan. 27, 2006)). Thus, the magistrate judge is correct that allowing the case to proceed would not remove the plaintiff from imminent danger.

This Court agrees with the magistrate judge that the plaintiff may not bring this FTCA claim without complete prepayment of the

\$400.00 filing fee. Accordingly, on de novo review, this Court upholds the recommendation of the magistrate judge.

IV. Conclusion

For the reasons set forth above, this Court, after a de novo review, the magistrate judge's report and recommendation (ECF No. 25) is AFFIRMED and ADOPTED in its entirety. The plaintiff's amended complaint (ECF No. 21) is thus DISMISSED WITHOUT PREJUDICE and the plaintiff's objections (ECF No. 30) are OVERRULED. Furthermore, the plaintiff's motion for leave to proceed in forma pauperis (ECF No. 22) is DENIED. It is ORDERED that this civil action be DISMISSED WITHOUT PREJUDICE and STRICKEN from the active docket of this Court.

Should the plaintiff choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit on the issues to which objection was made, he is ADVISED that he must file a notice of appeal with the Clerk of this Court within 60 days after the date of the entry of the judgment order.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to the pro se plaintiff by certified mail 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: July 26, 2018

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