

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

VIRGINIA ARLENE GOFORTH, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 1:09-0003

UNITED STATES OF AMERICA,
et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of findings and recommendation regarding disposition pursuant to 28 U.S.C.A. § 636(b)(1)(B). Magistrate Judge VanDervort submitted to the court his Findings and Recommendation on August 11, 2009, in which he recommended that the district court dismiss plaintiff's complaint as to claims asserted under Bivens, and refer this matter back to him for further proceedings regarding plaintiff's claims under the Federal Tort Claims Act.

In accordance with the provisions of 28 U.S.C.A. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Findings and Recommendation. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

On August 31, 2009, plaintiff filed a "Response to Proposed Findings and Recommendations." In that document, she largely agreed with the Proposed Findings and Recommendation of Magistrate Judge VanDervort. However, she proceeds to recite a number of "facts" which, according to her, support her claim that she was subjected to cruel and unusual punishment in violation of the Eighth Amendment. Therefore, it appears to the court, that she is objecting to Magistrate Judge VanDervort's recommendation that her claim pursuant to Bivens be dismissed. Presumably, these "facts" were not before Magistrate Judge VanDervort when he originally screened the case. Therefore, the court deems it appropriate to refer the matter back to him for reconsideration of plaintiff's Bivens claim in light of the additional information provided.

Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court adopts the findings and recommendations except as modified herein. Accordingly, the court hereby **REFERS** the matter back to Magistrate Judge VanDervort for consideration of plaintiff's FTCA claim and further proceedings consistent with this Memorandum Opinion and Order.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se, and counsel of record.

IT IS SO ORDERED this 14th day of April, 2010.

ENTER:



David A. Faber

Senior United States District Judge