

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

KENNETH EDWARD CHANCE, JR.,

Plaintiff,

v.

CIVIL ACTION NO. 2:08-1156

JIM SPEARS, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is a motion to dismiss on behalf of defendants Jim Spears and Paul Lyttle. (Doc. No. 76.) By Standing Order entered August 1, 2006, and filed in this case on October 7, 2008, this matter was referred to United States Magistrate Judge Mary E. Stanley. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge Stanley to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge Stanley submitted her Proposed Findings and Recommendation ("PF & R") on January 14, 2010, recommending that this court grant the motion to dismiss defendants Spears and Lyttle for failure to state a claim upon which relief can be granted against either defendant. (Doc. No. 80 at 2-3.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Stanley's PF &

R. Neither party filed objections to the magistrate judge's proposed findings, and the failure to file objections within the appropriate time frame constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985).

Having reviewed the Proposed Findings and Recommendation filed by Magistrate Judge Stanley, the court (1) **CONFIRMS AND ACCEPTS** the magistrate judge's findings (Doc. No. 80); and (2) **GRANTS** the motion to dismiss (Doc. No. 76).

The Clerk is directed to terminate defendants Spears and Lyttle and to forward a copy of this Memorandum Opinion and Order to counsel of record and to any unrepresented party.

It is **SO ORDERED** this 10th day of May, 2010.

ENTER:



David A. Faber

Senior United States District Judge