

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

MIGUEL ANGEL DELGADO,

Plaintiff,

v.

Civil Action No. 2:09-1252

DAVID BALLARD and  
CLARENCE J. RIDER and  
JAMES McCLOUD and  
CHARLENE SOTAK,  
all sued in their official  
and individual capacities,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is plaintiff's "OBJECTIONS, REQUEST FOR RECONSIDERATION AND REQUEST FOR A HEARING" filed December 10, 2010. The court recharacterizes the filing as an appeal of the November 24, 2010, order ("appealed order") of the United States Magistrate Judge.

Federal Rule of Civil Procedure 72(a) governs appeals from rulings of a magistrate judge on nondispositive matters:

When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must

consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

Fed. R. Civ. Proc. 72(a) (emphasis added). The United States Court of Appeals for the Tenth Circuit has observed as follows:

Rule 72(a), and its statutory companion, see 28 U.S.C. § 636(b)(1), place limits on a party's ability to seek review of a magistrate judge's non-dispositive order. . . .

In [sum] . . . , the district court was required to "defer to the magistrate judge's ruling unless it [was] clearly erroneous or contrary to law."

Allen v. Sybase, Inc., 468 F.3d 642, 658 (10th Cir. 2006)

(emphasis added) (quoted authority omitted).

A decision is clearly erroneous when, following a review of the entire record, a court "is left with the definite and firm conviction that a mistake has been committed." United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948). A decision is "contrary to law" when it "fails to apply or misapplies relevant statutes, case law or rules of procedure." Transamerica Life Ins. Co. v. Lincoln Nat'l Life Ins. Co., 592 F. Supp.2d 1087, 1093 (N.D. Iowa 2008).

In the appealed order, the magistrate judge denied plaintiff's motions for appointment of counsel and to compel discovery. The magistrate judge considered both requests in

accordance with governing law. The reasoned analysis as to each is neither clearly erroneous nor contrary to law. The court, accordingly, ORDERS that the appealed order be, and it hereby is, affirmed.

Plaintiff does not appear to challenge the merits of the denial of his motion for appointment of counsel. He asserts instead that officials at his correctional institution are not providing him access to an adequate law library and the writing materials necessary to prosecute this action. With respect to the denial of his motion to compel, he suggests, in part, that the same officials have delivered responses to certain of his discovery requests by referencing documents purportedly, but not actually, attached thereto as exhibits.

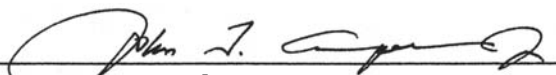
It is noted that plaintiff cites legal authorities in his appeal, demonstrating some level of access to research materials. Nevertheless, the court ORDERS that respondents be, and they hereby are, directed to respond to plaintiff's contentions concerning access to an adequate law library and writing materials no later than December 30, 2010. Defendants should also address therein whether any exhibits were inadvertently omitted from the responses to discovery previously served upon plaintiff. The magistrate judge may consider the

responses, and any reply which may be filed by plaintiff no later than January 14, 2011, in due course.

Based upon the foregoing, it is ORDERED that the appealed order be, and it hereby is, affirmed.

The Clerk is directed to forward copies of this written opinion and order to counsel of record, the pro se plaintiff, and the United States Magistrate Judge.

DATED: December 15, 2010

  
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John T. Copenhaver, Jr.  
United States District Judge