

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

CHARLESTON DIVISION

GENE GAYLOR,

Plaintiff,

v.

CIVIL ACTION NO. 2:10-cv-00258

GHASSAN Y. DAGHER,

Defendant.

MEMORANDUM OPINION AND ORDER

This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). On January 14, 2011, the Magistrate Judge submitted findings of fact and recommended that the court **GRANT** the Defendant's Motion to Dismiss Plaintiff's Complaint [Docket 10] and **DISMISS** this action for failure to state a claim upon which relief can be granted. The court did not receive objections from either party within the time allotted. Therefore, on February 7, 2011, the court issued a Memorandum Opinion and Order [Docket 24] adopting the Magistrate Judge's proposed findings of fact and recommendation of law ("PF&R") and entering judgment in favor of the defendant [Docket 25]. On February 14, 2011, the plaintiff filed a Response [Docket 26] stating that he had not received a copy of the PF&R through the prison mail system, that he had not signed the Mount Olive Correction Complex record book for legal mail, and thus had not had an opportunity to object to the PF&R. The court construed the Response as a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure

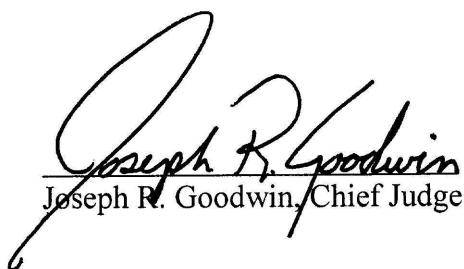
and on February 25, 2011, vacated its prior Memorandum Opinion and Order and Judgment Order [Docket 27]. The court additionally ordered the parties to file any objections to the PF&R within fourteen (14) days, plus three (3) days for service and mailing, from the date of that Order. Neither party has filed objections.

A district court “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C). This court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

As the parties have not filed objections in this case, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge [Docket 22] and orders judgment consistent therewith. The court **DISMISSES** the plaintiff’s Complaint [Docket 2] for failure to state a claim upon which relief can be granted and **DIRECTS** that this action be removed from the docket.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: July 25, 2011


Joseph R. Goodwin, Chief Judge