

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

CHARLESTON DIVISION

ANDREW MILLER,

Plaintiff,

v.

CIVIL ACTION NO. 2:17-cv-04398

JAMES STUCKY, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court are Plaintiff's Application to Proceed Without Prepayment of Fees and Costs, (ECF No. 1), and Motion to Proceed In Forma Pauperies [sic], (ECF No. 3). By Standing Order filed in this case on November 27, 2017, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of proposed findings and a recommendation for disposition ("PF&R"). (ECF No. 5.) Magistrate Judge Tinsley filed his PF&R on August 27, 2018, recommending that this Court find that Plaintiff fails to state a claim upon which relief can be granted, dismiss this matter pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A, and deny both the Application to Proceed Without Prepayment of Fees and Costs, (ECF No. 1), and Motion to Proceed In Forma Pauperies [sic], (ECF No. 3). (ECF No. 6.)

The Court is not 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). Failure to file timely objections constitutes a waiver of *de novo* review and the Plaintiff's right to appeal this

Court's order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a *de novo* review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

Objections to the PF&R in this case were due on September 13, 2018. To date, no objections have been filed. Accordingly, the Court **ADOPTS** the PF&R, (ECF No. 6), and **FINDS** that Plaintiff's Complaint, (ECF No. 2), fails to state a claim upon which relief can be granted. The Court further **DENIES** Plaintiff's Application to Proceed Without Prepayment of Fees and Costs, (ECF No. 1), and Motion to Proceed In Forma Pauperes [sic], (ECF No. 3), **DISMISSES** this civil action pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A, and **DIRECTS** the Clerk to remove this matter from the Court's docket.

IT IS SO ORDERED.

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

ENTER: September 20, 2018



THOMAS E. JOHNSTON, CHIEF JUDGE