Umberger v. Underwood Doc. 10

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

BECKLEY DIVISION

CHRISTOPHER UMBERGER,

v.

Plaintiff,

CIVIL ACTION NO. 5:08-cv-00883

CHRISTY UNDERWOOD, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court are the Motion to Dismiss Defendant Christy Underwood and Substitute the United States of America [Docket 3], the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction [Docket 5], and Plaintiff's Motion to Dismiss Without Prejudice [Docket 8]. By Standing Order entered on August 1, 2006, and filed in this case on July 1, 2008, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation (PF&R). Magistrate Judge VanDervort filed his PF&R [Docket 9] on January 7, 2009, recommending that this Court **GRANT** the United States' motion to substitute and motion to dismiss and **DENY AS MOOT** Plaintiff's motion to dismiss.

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 Petitioner'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 January

26, 2009. To date, no objections have been filed.

Accordingly the Court **ADOPTS** the PF&R [Docket 9], **GRANTS** the Motion to Dismiss

Defendant Christy Underwood and Substitute the United States of America [Docket 3], **GRANTS**

the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction [Docket 5], DENIES

AS MOOT Plaintiff's Motion to Dismiss Without Prejudice [Docket 8], and DISMISSES the case

from the docket. A separate Judgment Order will enter this day implementing the rulings contained

herein.

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:

February 3, 2009

THOMAS E. JOHNSTON

UNITED STATES DISTRICT JUDGE

2