

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

CHARLEY BAILEY,
*Administrator of the Estate
of Daniel Bailey,*

Plaintiff,

v.

CIVIL ACTION NO. 5:16-cv-02959

BECKLEY VA MEDICAL
CENTER,

Defendant.

MEMORANDUM OPINION AND ORDER

On March 29, 2016, the Plaintiff, proceeding pro-se, filed his *Application to Proceed Without Prepayment of Fees and Costs* (Document 1) and his *Complaint* (Document 2).

By *Standing Order* (Document 3) entered on March 29, 2016, this action was referred to the Honorable Omar J. Aboulhosn, 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. On April 7, 2016, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 4), wherein it is recommended that this Court deny the Plaintiff's *Application to Proceed Without Prepayment of Fees and Costs*, dismiss the Plaintiff's *Complaint*, and remove this matter from the Court's docket "unless Plaintiff can demonstrate within the period of time allotted for objecting to this Proposed Findings and Recommendation that (1) Plaintiff is the sole beneficiary of the estate *and* that the estate has no creditors, or (2) Plaintiff has obtained counsel to represent him." (*Proposed Findings and Recommendation* at 5).

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by April 25, 2016. Likewise, due by April 25, 2016, were any submissions by the Plaintiff to demonstrate that he is the sole beneficiary of the estate and that the estate has no creditors, or that he had obtained counsel. No filings have been submitted. Accordingly, the Court **FINDS** that the Plaintiff has failed to demonstrate that he is the sole beneficiary of the estate and that the estate has no creditors, and has failed to obtain counsel to represent him in this matter.

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 a party'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).

Wherefore, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Plaintiff's *Application to Proceed Without Prepayment of Fees and Costs* (Document 1) be **DENIED**, the Plaintiff's *Complaint* (Document 2) be **DISMISSED**, and that this matter be **REMOVED** from the Court's docket.

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

ENTER: April 29, 2016



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA