

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

DAVID ALLEN MINOR,

Plaintiff,

v.

Civil Action No. 5:06CV75
(STAMP)

SERGEANT THOMAS F. YANERO,
West Virginia State Police,
RITA ALBURY, West Virginia
Division of Corrections,
FIRST SERGEANT COLLINS,
Regional Jail and Correctional
Facility Authority and
MR. ACKERMAN, Potomac Highlands
Regional Jail,

Defendants.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE THAT ACTION
BE DISMISSED WITHOUT PREJUDICE, DENYING AS MOOT
DEFENDANT YANERO'S MOTION TO COMPEL DISCOVERY
RESPONSES, AND DENYING AS MOOT
PLAINTIFF'S LETTER MOTION TO DISMISS

I. Facts and Procedural History

The pro se¹ plaintiff, David Minor, filed a complaint in this Court pursuant to 42 U.S.C. § 1983. This matter was referred to United States Magistrate Judge James E. Seibert for report and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 83.09. By memorandum opinion and order entered on March 26, 2008, this Court dismissed the complaint as to all defendants

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1237 (7th ed. 1999).

except defendant Sergeant Thomas F. Yanero. Subsequently, defendant Yanero filed a motion to compel discovery responses. The magistrate judge scheduled an evidentiary hearing, which was held on November 25, 2008. The defendant, by counsel, appeared for the hearing telephonically. The plaintiff did not appear. However, counsel for the defendant informed Magistrate Judge Seibert that she had received a fax from the plaintiff indicating that the plaintiff had previously informed this Court that he no longer wished to pursue this suit at this time.

Magistrate Judge Seibert entered a report and recommendation noting that the docket in this action does not indicate the plaintiff notified this Court of his desire to suspend prosecution of this suit but recommending that this case be dismissed without prejudice on the basis of the letter faxed from the plaintiff to the defendant, a copy of which Magistrate Judge attached to the report and recommendation. No objections were filed to the report and recommendation. To the contrary, during the period for filing objections, the plaintiff filed a letter motion with this Court requesting that his complaint be dismissed without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the

recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because none of the parties filed objections, this Court reviews the report and recommendation of the magistrate judge for clear error.

Having reviewed the magistrate judge's report and recommendation for clear error and finding none, this Court concludes that the magistrate judge's report and recommendation should be affirmed and adopted in its entirety. Accordingly, the defendant's motion to compel discovery responses must be denied as moot, and the plaintiff's letter motion to dismiss without prejudice, which requests the same relief recommended by the magistrate judge's report, must be denied as moot.

V. Conclusion

For the reasons set forth above, this Court finds that the magistrate judge's report and recommendation should be and is hereby AFFIRMED AND ADOPTED in its entirety. Accordingly, it is ORDERED that the plaintiff's complaint be DISMISSED WITHOUT PREJUDICE. It is further ORDERED that the defendant's motion to compel discovery responses be DENIED as moot. It is further ORDERED that the plaintiff's letter motion to dismiss be DENIED as moot. Because this case is dismissed, the pretrial conference and trial are VACATED.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: December 23, 2008

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE