

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

SHAWN A. PHILLIPS and
MARKUS D. JOHNSON,

Plaintiffs,

v. // CIVIL ACTION NO. 1:07cv102
(Judge Keeley)

JOE DRIVER, CAPTAIN L. ODDO,
LT. ANTONELLIE and D. GREENWALT,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On July 30, 2007, pro se plaintiffs Shawn A. Phillips ("Phillips") and Markus D. Johnson ("Johnson"), filed a civil rights action seeking relief pursuant to the Federal Tort Claim Act, 28 U.S.C. §§ 2671, *et. seq.*, ("FTCA"), and Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). The complaint was signed only by Phillips. At the same time, Phillips filed a Motion to Proceed Without Prepayment of Fees (dkt. no. 1). He then executed a Consent to Collection of Fees form and a Prisoner Trust Account Report. Johnson neither filed a motion to proceed in forma pauperis ("IFP"), nor did he pay the required filing fees.

The Court referred this matter to United States Magistrate Judge John S. Kaul for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 72.01. On November 29, 2007, Magistrate Judge Kaul issued an

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Opinion and Report and Recommendation recommending that Johnson be dismissed from the action without prejudice. In making this recommendation, the Magistrate Judge noted that the Prisoner Litigation Reform Act does not address the issue of whether multiple prisoner plaintiffs can proceed IFP in a single case. After reviewing the relevant law from other circuits, the Magistrate Judge recommended that the Court adopt a rule that multiple-prisoner plaintiffs not be permitted to proceed IFP together in a single action.

Phillips, who, in the interim, had been released from the Bureau of Prisons, accepted service of the Report and Recommendation on December 1, 2007. Johnson was served on December 3, 2007. The Report and Recommendation specifically warned that failure to object to the recommendation would result in the waiver of any appellate rights on this issue. No objections were filed.¹

The Court, therefore, **ADOPTS** the Report and Recommendation, and **DISMISSES** Johnson from this action without prejudice (dkt. no. 16).

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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The Clerk is directed to mail a copy of this Order to the pro se plaintiffs, certified mail, return receipt requested and to counsel of record.

Dated: May 7, 2008

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE