

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

KENNETH CULBREATH,

Plaintiff,

v.

CRIMINAL NO. 1:07cv113
(Judge Keeley)

HARLEY LIPTON, Ex. Dir. Bureau
of Prisons, JOYCE FRANCIS, Warden
F.C.I. Gilmer, E, MACE, DO, Clinical
Director F.C.I. Gilmer, SPEARS, Food
Service Administrator, WILSON, Assistant
Food Service Administrator, HORBAT CO.,
U.S. ATTY, For Northern District of West
Virginia, JOHN DOE, JANE DOE, and ALL
UNKNOWN PARTIES,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On August 22, 2007, the pro se plaintiff, Kenneth Culbreath ("Culbreath"), a prisoner at the Federal Correctional Institution in Gilmer County, West Virginia ("FCI-Gilmer"), filed a civil rights complaint pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). Pursuant to Local Rule of Prisoner Litigation 83.02, United States Magistrate Judge James E. Seibert conducted an initial review and entered a Report and Recommendation ("R&R") on July 22, 2008.

Within that R&R, the Magistrate Judge recommended that this Court dismiss with prejudice all claims against Harley Lappin ("Lappin"), Joyce Francis ("Francis"), E. Mace ("Mace"), CO Hobrat,

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the United States Attorney for the Northern District of West Virginia (the "U.S. Attorney"), John Doe, Jane Doe, and all Unknown Parties. Magistrate Judge Seibert also recommended that the claims against Spears, Wilson and Miller proceed.

Magistrate Judge Seibert's Report and Recommendation informed Culbreath that failure to object to the recommendations would result in the waiver of his appellate rights on those issues. On August 5, 2008, Culbreath filed objections to the R&R. In his objections, Culbreath only objects to this Court dismissing Mace from this case. He does not object to Magistrate Judge Seibert's other recommendations.

Upon de novo review, the Court finds that the Magistrate Judge properly applied the controlling legal standard of Weller v. Dept. of Social Servs., 901 F.2d 384 (4th Cir. 1990), when he determined that this Court should dismiss Mace as a party because Culbreath has failed to allege any wrongdoing by Mace in the complaint.

Consequently, the Court **ADOPTS** the R&R in its entirety (dkt. no. 23) and **DISMISSES WITH PREJUDICE** all claims against Lappin, Francis, Mace, CO Hobrat, the U.S. Attorney, John Doe, Jane Doe, and all Unknown Parties. The Court **ORDERS** that Spears, Wilson and Miller be **SERVED** with a copy of the summons and complaint and

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REFERS this case back to Magistrate Judge Seibert for further proceedings on the merits.

It is so **ORDERED**.

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

Dated: August 12, 2008.

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