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

MARK RILEY,

Plaintiff,

v. Civil Action No. 5:08CV72 (STAMP)

ADMINISTRATOR MARTIN,
SARA TRADER, SGT. KEENER,
WARE, CO. BENNETT,[1] and
MEDICAL STAFF,

Defendants.

MEMORANDUM OPINION AND ORDER AFFIRMING AND ADOPTING REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

I. Procedural History

The pro se[2] plaintiff, Mark Riley, filed a civil rights complaint against the above-named defendants. The matter was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation. The plaintiff was granted permission to proceed as a pauper and directed to pay an initial partial filing fee. On October 30, 2008, because the Court had not received the required filing fee, the magistrate judge issued an order directing the plaintiff to show cause why his action should not be dismissed for failure to prosecute. The plaintiff did not respond to that order. To date, the plaintiff

[1]The report and recommendation incorrectly names this defendant as "Ware, C/O Bench."

[2]"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).

has not paid the required filing fee or responded to the magistrate judge's order to show cause.

On December 24, 2008, the magistrate judge entered a report and recommendation recommending that the plaintiff's civil rights complaint be dismissed without prejudice for failure to prosecute. The magistrate judge advised the parties that, pursuant to 28 U.S.C. § 636(b)(1)(C), any party may file written objections to his proposed findings and recommendation within ten days after being served with a copy of the magistrate judge's recommendation. The plaintiff has not filed objections. For the reasons set forth below, this Court finds that the report and recommendation of the magistrate judge should be affirmed and adopted in its entirety.

II. Applicable Law

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. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because the plaintiff did not file objections, this Court reviews the report and recommendation for clear error.

III. Discussion

The magistrate judge found that as of the date of his report and recommendation, the plaintiff had not paid the required filing

fee, responded to the magistrate judge's order to show cause, or otherwise explained his reasons for noncompliance. After a review of the pleadings in this action, this Court finds that the plaintiff still has not paid the filing fee, responded to the magistrate judge's order to show cause, or otherwise explained his reasons for noncompliance. Accordingly, this Court finds that the magistrate judge's report and recommendation is not clearly erroneous because the plaintiff has failed to prosecute his case.

IV. Conclusion

Because this Court concludes that the magistrate judge's recommendation is without clear error, this Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation in its entirety. Accordingly, the plaintiff's civil rights complaint is hereby DISMISSED WITHOUT PREJUDICE for failure to prosecute. This civil action is hereby DISMISSED and STRICKEN from the active docket of this Court.

Finally, this Court finds that the plaintiff was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action will result in a waiver of appellate rights. Because the plaintiff has failed to object, he has waived his right to seek appellate review of this matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se plaintiff by certified mail and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: January 26, 2009

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