

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

KEVIN BRYANT BROGDEN,

Plaintiff,

v.

// CIVIL ACTION NO. 1:10CV173
(Judge Keeley)

TODD ALLEN SMITH, Individually,
and THE LAW OFFICES OF TODD A. SMITH,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATIONS [DKT. NO. 25],
GRANTING DEFENDANTS' AMENDED MOTION TO DISMISS COMPLAINT
MADE UNDER SPECIAL APPEARANCE [DKT. NO. 20], DENYING
PLAINTIFF'S MOTION TO DENY DEFENDANTS' MOTION TO DISMISS AND
RESPONSE AS TO ROSEBORO NOTICE [DKT. NO. 24], DENYING AS
MOOT DEFENDANTS' SPECIAL APPEARANCE AND MOTION TO DISMISS ___
COMPLAINT [DKT. NO. 9], AND DISMISSING CASE WITHOUT PREJUDICE

On March 18, 2011, the Honorable John S. Kaull, United States Magistrate Judge ("Magistrate Judge Kaull"), issued his Report and Recommendation ("R&R"), in which he concluded that the pro se plaintiff, Kevin Bryant Brogden ("Brogden"), had failed to rebut the presumption that his domicile is in North Carolina. See Schuch v. Cipriani, 5:05CV160, 2006 WL 1651023, at *2 (N.D.W. Va. June 13, 2006). Based on this conclusion, Magistrate Judge Kaull determined that the Court lacks subject matter jurisdiction over this diversity action because the parties are not completely diverse, and recommended that the Court 1) grant the amended motion to dismiss filed by the pro se defendants, Todd Allen Smith and the Law Offices of Todd A. Smith ("Smith"), 2) deny Brogden's motion

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AND RESPONSE AS TO ROSEBORO NOTICE [DKT. NO. 24],
DENYING AS MOOT DEFENDANTS' SPECIAL APPEARANCE AND
MOTION TO DISMISS COMPLAINT [DKT. NO. 9],
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seeking to deny Smith's motion to dismiss and response to Roseboro notice, and 3) deny as moot Smith's special appearance and motion to dismiss complaint.¹

The R&R also specifically warned the parties that their failure to object to the Magistrate Judge's recommendations within fourteen days following receipt of the R&R would result in the waiver of any appellate rights they might have as to these issues. See 28 U.S.C. § 636; Thomas v. Arn, 474 U.S. 140, 152 (1985). Smith and Brogden each received service of the R&R on March 21, 2011 (dkt. nos. 26, 27). To date, neither has filed objections.

Based on the failure of the parties to object to the R&R, and after conducting a de novo review, the Court **ADOPTS** the R&R in its entirety (dkt. no. 25), **GRANTS** Smith's amended motion to dismiss complaint made under special appearance (dkt. no. 20), **DENIES** Brogden's motion to deny Smith's motion to dismiss and response as to Roseboro notice (dkt. no. 24), **DENIES AS MOOT** Smith's special

¹ Brogden is a federal inmate. Smith is an attorney in North Carolina.

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appearance and motion to dismiss complaint (dkt. no. 9), and
DISMISSES this case **WITHOUT PREJUDICE**.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk to
enter a separate judgment order and to mail copies of both orders
to the pro se parties via certified mail, return receipt requested.

Dated: April 21, 2011.

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