

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

ANDREW MOODY,

Plaintiff,

v.

//

CIVIL ACTION NO. 1:13CV24
(Judge Keeley)

ARTHUR LOGAN, JR.

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On February 7, 2013, the pro se plaintiff, Andrew Moody ("Moody"), filed a civil rights complaint in the United States District Court in the Southern District of West Virginia, pursuant to petition pursuant to Bivens v. Six Unknown Federal Agents, 403 U.S. 388 (1971). The complaint was transferred to this Court, and referred to United States Magistrate Judge John S. Kaul for initial screening and a report and recommendation in accordance with LR PL P 2. On February 15, 2013, Moody moved for leave to proceed in forma pauperis. (Dkt. No. 9). Upon further inquiry, the Court learned that the plaintiff, who is currently incarcerated by the Bureau of Prisons, possessed \$464.01 as of February 27, 2013 in his Prisoner Trust Account, and thus was capable of paying the \$350 filing fee necessary to proceed with his suit.

On March 7, 2013, Magistrate Judge Kaul issued an Opinion and Report and Recommendation ("R&R"), in which he recommended that Moody's motion for leave to proceed in forma pauperis be denied because Moody is capable of paying the filing fee. The R&R also

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specifically warned Moody that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. The parties did not file any objections.*

Consequently, finding no clear error, the Court:

- **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 20);
- **DENIES** the motion for leave to proceed in forma pauperis (dkt. no. 9);
- **GRANTS** the plaintiff's Motion for Extension of Time to Pay Filing Fee (dkt. no. 24); and
- **ORDERS** the plaintiff to pay the \$350 filing fee by May 30, 2013.

It is so **ORDERED**.

* 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 Court directs the Clerk of Court to transmit copies of this order to counsel of record and to the pro se plaintiff, certified mail, return receipt requested.

Dated: April 30, 2013.

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