

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DANIEL R. MILLER, JR., :
Plaintiff : No. 4:02-CV-945
 : (Judge McClure)
v. :
 :
CARL PUCUL, Individually and in his :
Official Capacity as Unit Manager at SCI :
Waymart; FRED GRASSO, Individually :
and in his Official Capacity as Counselor :
at SCI Waymart; MARK FRYER, :
Individually and in his Official Capacity as :
Counselor at SCI Waymart, :
Defendants :

ORDER

August 28, 2002

BACKGROUND:

Plaintiff Daniel R. Miller Jr., presently incarcerated at the State Correctional Institution at Waymart, Pennsylvania, ("SCI-Waymart") filed this *pro se* action on June 3, 2002.¹ Plaintiff has styled his pleading as a civil rights action pursuant to 42 U.S.C. § 1983.

Along with his complaint, plaintiff also completed and filed an application to proceed *in forma pauperis*, as well as the authorization to have funds deducted

¹ We construe liberally plaintiff's *pro se* complaint. Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

from his prison account.² Additionally, plaintiff filed an application for appointment of counsel.

On July 12, 2002, United States Magistrate Judge Thomas M. Blewitt submitted a report and recommendation, recommending that plaintiff's complaint be dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Magistrate Judge Blewitt also recommended that plaintiff's application for appointment of counsel be dismissed as moot.

Plaintiff filed his objections to the report and recommendation on July 23, 2002.³

For the reasons which follow, we will adopt in its entirety the report and recommendation of the magistrate judge as the holding of the court.

DISCUSSION:

A district court is required to review de novo those portions of a magistrate judge's report to which objections are made. See Carpet Group Int'l v. Oriental Rug Imp. Assoc., Inc., 227 F.3d 62, 71 n.6 (3d Cir. 2000); Commonwealth of

² The court issued an administrative order on June 3, 2002, directing the warden to commence the withdrawal of the full filing fee due the court from the plaintiff's prison trust fund account.

³ Captioned as "Appeal from Magistrate's Report and Recommendation" ("Plaintiff's Objections") (record doc. no. 10).

Penna. v. United States, 581 F.Supp. 1238, 1239 (M.D. Pa. 1984); 28 U.S.C. § 636(b)(1). When no objections are filed to the report of a magistrate judge, a court has discretion to review that report as it deems appropriate. When a district court accepts a magistrate judge's report, the report becomes the judgment of the court. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987).

Here, plaintiff has filed objections to the report and recommendation. Therefore, we review de novo the portions of the magistrate judge's report to which objections were made.

In this case, plaintiff alleges that, while he was incarcerated at SCI-Waymart, defendants sent his three step daughters defamatory Department of Corrections Special Visitor Inquiry Forms. The plaintiff avers that, by sending his step daughters the aforementioned forms with references to false charges against him – specifically Robbery, Simple Assault and Indecent Assault – defendants have defamed and slandered him and “harmed his reputation.” Plaintiff's Complaint (record doc. no. 1) at ¶¶ 5, 8.

Magistrate Judge Blewitt recommended that plaintiff's complaint be dismissed for failure to state a claim upon which relief may be granted under 28 U.S.C. § 1915(e)(2)(B)(ii), providing:

Notwithstanding any filing fee, or any portion thereof,

that may have been paid, the court shall dismiss the case at any time if the court determines that – (A) the allegation of poverty is untrue; or (B) the action or appeal – (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2).

The magistrate judge noted specifically that plaintiff's defamation claim is a state cause of action, see Marcone v. Penthouse Int'l Magazine for Men, 754 F.2d 1072, 1077 (3d Cir. 1985), and that "no conduct has been alleged in the complaint that could be a violation of [] [p]laintiff's federal rights," as necessary to establish a claim under 42 U.S.C. § 1983. Report and Recommendation (record doc. no. 9) at 2. See Sameric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 590 (3d Cir. 1998) (providing that, in order to state adequately a claim under 42 U.S.C. § 1983, conduct alleged must have been committed by a person acting under color of state law, and must deprive the complainant of rights secured under the United States Constitution or federal law). We agree with the magistrate judge that plaintiff's defamation claim does not state an action for a violation of any of his federal rights.

Plaintiff's objections focus on the statement by the magistrate judge that: "[p]laintiff does not cite a single federal case or statute to suggest that his claims

raise a federal right.” Report and Recommendation at 3. Plaintiff contends that he did not cite any federal cases or statutes because the form used by him in filing his civil rights complaint requested specifically that plaintiff “not give any legal arguments or cite any cases or statutes.” Plaintiff’s Complaint at 2. In referring to that request as a “Rule,” plaintiff claims he was “barred” from providing federal cases or statutes in support of his instant action. Plaintiff’s Objections at 6. Clearly, plaintiff’s objection on this point does not change the fact that his complaint against defendants is one involving a state law claim of defamation, and not a federal cause of action. Thus, even if plaintiff did cite federal cases in support of his instant action, his complaint would still fail to state a civil rights action pursuant to § 1983.

Based on the foregoing, we will adopt in its entirety the report and recommendation of the magistrate judge.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The report and recommendation of United States Magistrate Judge Thomas M. Blewitt (record doc. no. 9, filed July 12, 2002) is adopted in its entirety as the holding of the court.

2. Plaintiff’s complaint (record doc. no. 1, filed June 3, 2002) is dismissed for failure to state a claim on which relief may be granted pursuant to 28

U.S.C. § 1915(e)(2)(B)(ii).

3. Plaintiff's application for appointment of counsel (record doc. no. 5, filed June 3, 2002) is denied as moot.

4. We certify for purposes of 28 U.S.C. § 1915(a)(3) that any appeal taken from this order is not taken in good faith.

5. The clerk is directed to close the case file.



James F. McClure, Jr.
United States District Judge