

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-13010-C

ROBERT L. CLARK,

Plaintiff - Appellant,

versus

ATTORNEY GENERAL,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Robert L. Clark has failed to pay the filing and docketing fees to the district court within the time fixed by the rules.; Motion for appointment of counsel is MOOT [8542788-2], effective September 07, 2018.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Walter Pollard, C, Deputy Clerk

FOR THE COURT - BY DIRECTION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWMAN DIVISION

ROBERT L. CLARK,

Plaintiff,

v.

ATTORNEY GENERAL,

Defendant.

**PRISONER CIVIL RIGHTS
42 U.S.C. § 1983**

**CIVIL ACTION FILE
NO. 1:17-CV-4023-MHC**

ORDER

This action comes before this Court on the Final Report and Recommendation (“R&R”) of Magistrate Judge Russell G. Vineyard [Doc. 2] that Plaintiff’s “Notice of Claim,” docketed as a *pro se* civil rights action, be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g). The Order for Service of the R&R [Doc. 3] provided notice that, in accordance with 28 U.S.C. § 636(b)(1), the parties were authorized to file objections within fourteen (14) days of the receipt of that Order. Within the time period for filing objections, Plaintiff filed a “motion to disqualify/amended complaint” in which he seeks to disqualify Judge Vineyard and to have this Court consider his claim against Defendant [Doc. 4]. Plaintiff

does not make any specific objections to the R&R’s recommendation of dismissal pursuant to 28 U.S.C. § 1915(g).

In reviewing a Magistrate Judge’s R&R, the district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). “Parties filing objections to a magistrate’s report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court.” United States v. Schultz, 565 F.3d 1353, 1361 (11th Cir. 2009) (quoting Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988)) (internal quotation marks omitted). Absent objection, the district court judge “may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge,” 28 U.S.C. § 636(b)(1), and “need only satisfy itself that there is no clear error on the face of the record” in order to accept the recommendation. FED. R. CIV. P. 72, advisory committee note, 1983 Addition, Subdivision (b). Further, “the district court has broad discretion in reviewing a magistrate judge’s report and recommendation”—it “does not abuse its discretion by considering an argument that was not presented to the magistrate judge” and “has discretion to decline to consider a party’s argument when that argument was not first presented to the magistrate judge.” Williams v. McNeil,

557 F.3d 1287, 1290-92 (11th Cir. 2009). In accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure, has reviewed the R&R for plain error given that Plaintiff has made no specific objections to its findings. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

Plaintiff did not pay the filing fee and he is ineligible to proceed *in forma pauperis* because he filed, while incarcerated, more than three civil actions that have been dismissed as frivolous, malicious, or for failure to state a viable claim. R&R at 1-2 (citing Clark v. Ga. Sup. Ct. Judges, No. 1:17-CV-1172-TCB-RGV (N.D. Ga. May 5, 2017); Clark v. All Judges in the Ga. Sup. Ct., No. 1:17-CV-0557-TCB-RGV (N.D. Ga. Mar. 30, 2017); Clark v. Heinstein, No. 3:12-CV-0083-TCB-RGV (N.D. Ga. July 9, 2012); Clark v. Carroll Cty. Jail, No. 3:04-CV-0030-JTC (N.D. Ga. Aug. 20, 2004); Clark v. Haralson Cty. Jail, No. 3:03-CV-0170-JTC (N.D. Ga. Jan. 21, 2004); Clark v. Hudson, No. 1:03-CV-0778-RLV (N.D. Ga. Apr. 17, 2003); Clark v. Cobb Cty. Adult Det. Ctr., No. 1:02-CV-2391-RLV (N.D. Ga. Nov. 5, 2002); Clark v. Ingram, 1:02-CV-2485-RLV (N.D. Ga. Oct. 31, 2002)).

Plaintiff presents no justification for the retroactive recusal of Judge Vineyard. In any event, this Court has reviewed the R&R for plain error and finds none, because it is clear that, once Plaintiff received his “third strike,” he lost his

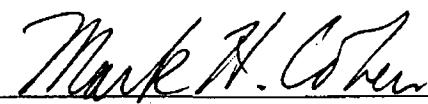
opportunity to proceed *in forma pauperis* to file new civil actions unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

Plaintiff has not demonstrated that he is under imminent danger of serious physical injury.

For the above reasons, it is hereby **ORDERED** that Plaintiff’s motion to disqualify [Doc. 4] is **DENIED**. After reviewing the R&R for plain error and finding none, the Court **APPROVES AND ADOPTS** the Final Report and Recommendation [Doc. 2] as the Opinion and Order of the Court. It is **ORDERED** that Plaintiff’s Notice of Claim [Doc. 1] is **DISMISSED WITHOUT PREJUDICE**.

The Clerk is **DIRECTED** to close the file.

IT IS SO ORDERED this 5th day of July, 2018.



MARK H. COHEN
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ROBERT L. CLARK,	::	PRISONER CIVIL RIGHTS
Plaintiff,	::	42 U.S.C. § 1983
	::	
v.	::	
	::	
ATTORNEY GENERAL,	::	CIVIL ACTION NO.
Defendant.	::	1:17-CV-4023-WSD-RGV

FINAL REPORT AND RECOMMENDATION

Plaintiff Robert L. Clark, presently confined in the Macon State Prison in Oglethorpe, Georgia, has submitted to the Court a "Notice of Claim," [Doc. 1], which has been docketed as this pro se civil rights action. Plaintiff states that "the attorney general's office made false statements concerning both of the plaintiff's habeas cases" and further that "plaintiff is filing a [42 U.S.C. §] 1983 claim against the attorney general's office for fraud and for conspiracy to commit fraud and for helping the state prison officials to commit medical malpractice against the plaintiff, and for aiding prison officials to deprive the plaintiff of his life and liberties without due process of law." [Id.]. Plaintiff has not paid the filing fee in this civil action and, thus, apparently seeks leave to proceed in forma pauperis.

A prisoner may not bring a civil action in federal court in forma pauperis "if [he] has, on 3 or more prior occasions, while incarcerated or detained in any facility,

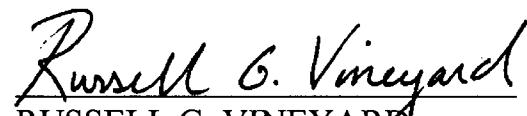
brought an action or appeal in a court of the United States that was dismissed on the grounds that it [was] frivolous, malicious, or fail[ed] to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Plaintiff has filed at least three prior cases while incarcerated that were dismissed either as frivolous, malicious, or for failure to state a claim. See Clark v. Ga. Sup. Ct. Judges, No. 1:17-CV-1172-TCB-RGV (N.D. Ga. May 5, 2017); Clark v. All Judges in the Ga. Sup. Ct., No. 1:17-CV-0557-TCB-RGV (N.D. Ga. Mar. 30, 2017); Clark v. Heinstein, No. 3:12-CV-0083-TCB-RGV (N.D. Ga. July 9, 2012); Clark v. Carroll Cty. Jail, No. 3:04-CV-0030-JTC (N.D. Ga. Aug. 20, 2004); Clark v. Haralson Cty. Jail, No. 3:03-CV-0170-JTC (N.D. Ga. Jan. 21, 2004); Clark v. Hudson, No. 1:03-CV-0778-RLV (N.D. Ga. Apr. 17, 2003); Clark v. Cobb Cty. Adult Det. Ctr., No. 1:02-CV-2391-RLV (N.D. Ga. Nov. 7, 2002); Clark v. Ingram, 1:02-CV-2485-RLV (N.D. Ga. Nov. 1, 2002). Plaintiff does not allege a current imminent threat of serious injury in this case. [Doc. 1]. Therefore, pursuant to § 1915(g), plaintiff cannot proceed in forma pauperis in this action.

When § 1915(g) bars a prisoner from proceeding in forma pauperis, “the proper procedure is . . . to dismiss the complaint without prejudice.” Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002) (per curiam). “The prisoner cannot simply pay the

filings fee after being denied in forma pauperis status. He must pay the filing fee at the time [s]he initiates the suit.” Id. Accordingly, it is **RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE**.

The Clerk is **DIRECTED** to terminate the referral to the assigned Magistrate Judge.

SO RECOMMENDED, this 17th day of OCTOBER, 2017.



RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE