[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-15228
Non-Argument Calendar

D.C. Docket No. 5:16-cv-00044-LGW-RSB

KASIM GANDY,

Plaintiff,

WASEEM DAKER,

Interested Party - Appellant,

versus

HOMER BRYSON, et al,

Defendants,

WARDEN, WARE STATE PRISON,
NATHAN BROOKS,
Tier II Program Unit Manager Ware State Prison,
in his official capacity,
WILLIAM STEEDLY,
Lt of Administrative Segregation Ware State Prison,
in his official capacity,
KIMBERLY LOWE,
Correctional Counselor Ware State Prison,
in her official capacity,

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COX,
Tier II Program Unit Manager Ware State Prison,
in his/her official capacity,

Defendants - Appellees.

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

(March 25, 2020)

Before JORDAN, LAGOA, and HULL, Circuit Judges.

PER CURIAM:

Waseem Daker, a state prisoner proceeding *pro se* and *in forma pauperis*, appeals from the district court's denial of his motion for reconsideration of the magistrate judge's order denying his motion to intervene in another inmate's civil rights action. He argues that he meets all the requirements for intervention as of right under Rule 24, and that the Prison Litigation Reform Act does not prohibit him from intervening into another inmate's case without paying the full filing fee.

We review questions of jurisdiction *de novo*. *See Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir. 2007). We review the denial of a Rule 59(e) motion for abuse of discretion. *See Lambert v. Fulton Cty., Ga.*, 253 F.3d 588, 598 (11th Cir. 2001). Unsuccessful motions to intervene as of right under Rule 24(a) are reviewed *de novo*. *See Walters v. City of Atlanta*, 803 F.2d 1135, 1150 n.16 (11th Cir. 1986).

Further, "[t]he district court's interpretation of the PLRA is a statutory finding and constitutes a question of law, which is reviewed *de novo*." *Hubbard v. Haley*, 262 F.3d 1194, 1196 (11th Cir. 2001).

The denial of a motion to intervene is generally not considered a final appealable order over which we have jurisdiction. *See Fed. Say. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 214 (11th Cir. 1993). However, jurisdiction to review such an order is created under our "'anomalous rule' which grants provisional jurisdiction to determine whether the district court erroneously concluded that the appellant was not entitled to intervene under Rule 24." *Id.* (quotation marks omitted). Thus, if we determine that the district court correctly ruled on the petition to intervene, then we do not have jurisdiction to address the district court's ruling. *See id.*

A party seeking to intervene as of right under Rule 24 must show that: (1) his motion to intervene is timely; (2) "he has an interest relating to the property or transaction which is the subject of the action"; (3) the disposition of the action may impede or impair his ability to protect that interest; and (4) his interest is not represented adequately by the existing parties to the suit. *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989); *see also* Fed. R. Civ. P. 24(a)(2). "If he establishes each of the four requirements, the district court must allow him to intervene." *Chiles*, 865 F.2d at 1213.

The PLRA provides that "if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1).

In *Hubbard*, the plaintiff and 17 other state prisoners filed a *pro se* civil rights action against several prison officials. *See* 262 F.3d at 1195. The district court dismissed the case, finding that each plaintiff had to file a separate complaint and pay a separate filing fee. *See id.* We held that, in the context of joinder under Rule 20, the PLRA clearly and unambiguously requires that "if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." *Id.* at 1197 (quotation marks omitted). Additionally, we determined that the Congressional purpose in promulgating the PLRA—to deter frivolous civil actions brought by prisoners by requiring each individual to pay the full filing fee—supported an interpretation that each prisoner in this case pay the full filing fee. *See id.* at 1197-98. We further held that the PLRA repealed the Rules Enabling Act, as expressed in Rule 20, to the extent that it conflicted with the PLRA. *See id.* at 1198 (citing *Mitchell v. Farcass*, 112 F.3d 1483, 1489 (11th Cir. 1997) ("A statute passed after the effective date of a federal rule repeals the rule to the extent that it actually conflicts."). Accordingly, we held that, "[b]ecause the plain language of the PLRA requires that each prisoner proceeding IFP pay the full filing fee," the district court had properly dismissed the multi-plaintiff action. *Id.*

Although *Hubbard* involves joinder rather than intervention, its reasoning applies here. We agree with the district courts in our circuit which have so held. See, e.g., *Daker v. Wetherington*, 469 F. Supp. 2d 1231, 1234–36 (N.D. Ga. 2007); *Smith v. Fla. Dept. of Corrections*, 2015 WL 500166, *2 (S.D. Fla. Feb. 4, 2015). We therefore conclude that the district court correctly denied (1) Mr. Daker's motion to intervene, and (2) Mr. Daker's motion for reconsideration. As a result, we do not have jurisdiction over the appeal. *See Falls Chase*, 983 F.2d at 214.

APPEAL DISMISSED.

In the United States District Court
For the Southern District of Georgia
Waycross Division

KASIM GANDY,	*	
	*	
Plaintiff,	*	CIVIL ACTION NO.: 5:16-cv-44
	*	
v.	*	
	*	
TOM GRAMIAK; NATHAN BROOKS; WILLIAM STEEDLY; KIMBERLY LOWE; and UNIT MANAGER COX,	*	
	*	
Defendants.	*	

ORDER

Presently before the Court are the Magistrate Judge's June 16, 2017, Report and Recommendation, Movant Waseem Daker's ("Daker") Motion for Reconsideration, and Daker's Motion for District Court to Rule on Motion for Intervention. Dkt. Nos. 59, 66, 70. For the reasons set forth below, the Court **DENIES** Daker's Motion for Reconsideration and **DISMISSES AS MOOT** Daker's Motion for District Court to Rule on Motion for Intervention. Additionally, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation as the opinion of the Court and **DENIES** Daker leave to appeal *in forma pauperis*.

BACKGROUND

On February 3, 2017, Daker filed a Motion to Intervene in this 42 U.S.C. § 1983 prisoner-plaintiff case. Dkt. No. 36.

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The Magistrate Judge denied Daker's Motion. Dkt. No. 39. Daker filed a Motion for Reconsideration, dkt. no. 55, which the Magistrate Judge denied on June 16, 2017, dkt. no. 58. The Magistrate Judge also recommended this Court deny Daker *in forma pauperis* status on appeal if Daker appealed the Order denying his Motion for Reconsideration. Dkt. No. 59. Daker then filed a second Motion for Reconsideration, requesting the district court to reevaluate the Magistrate Judge's June 16, 2017, Order denying his first Motion for Reconsideration. Dkt. No. 66. Daker also separately filed a Motion asking the District Court to rule upon the originally filed Motion to Intervene. Dkt. No. 70.

DISCUSSION

The Court construes Daker's second Motion for Reconsideration as a Rule 72(a) objection or appeal of the Magistrate Judge's June 16, 2017, Order.[1] Under Federal Rule of Civil Procedure 72(a), "[a] party may serve and file objections to [a magistrate judge's] order within 14 days after being served with a copy. . . . The district judge in the case must

[1] "Federal courts sometimes will ignore the legal label that a *pro se* litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category." Retic v. United States, 215 F. App'x 962, 964 (11th Cir. 2007) (quoting Castro v. United States, 540 U.S. 375, 381 (2003)). Federal courts "may do so in order to avoid an unnecessary dismissal, to avoid inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a *pro se* motion's claim and its underlying legal basis." Id. (quoting Castro, 540 U.S. at 381-82).

consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a); see also 28 U.S.C. § 636(b)(1)(A) (reciting same "clearly erroneous or contrary to law" standard).

District courts apply the clearly erroneous standard to findings of fact by the magistrate judge and the contrary to law standard to legal conclusions. Both standards are "exceedingly deferential." Pate v. Winn-Dixie Stores, Inc., No. CV 216-166, 2014 WL 5460629, at *1 (S.D. Ga. Oct. 27, 2014) (internal citations omitted). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing [body] on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal., 508 U.S. 602, 622 (1993)(citing United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948)). A finding is contrary to law "where it either fails to follow or misapplies the applicable law." Jackson v. Deen, No. CV412-139, 2013 WL 3991793, at *2 (S.D. Ga. Aug. 2, 2013)(citations omitted).

The Court discerns no reason to modify or set aside any part of the Magistrate Judge's Order. The Magistrate Judge applied the appropriate legal standard in denying Daker's Motion for Reconsideration and addressed Daker's arguments extensively. Dkt. No. 59, pp. 3-4. Furthermore, Daker's arguments

challenging the Magistrate Judge's June 16, 2017, Order simply reiterate the arguments already discussed and rejected by the Magistrate Judge. The Court sees no error in that analysis, much less clear error, and does not find the Magistrate Judge's ruling to be contrary to law.

CONCLUSION

Accordingly, the Court **DENIES** Daker's Motion for Reconsideration, dkt. no. 66, and **DISMISSES AS MOOT** Daker's Motion for this Court to rule on his previously-addressed Motion to Intervene, dkt. no. 70. Furthermore, the Court **ADOPTS** the Magistrate Judge's June 16, 2017, Report and Recommendation, dkt. no. 59, as the opinion of the Court and **DENIES** Daker leave to appeal *in forma pauperis*. The Court **DIRECTS** the Clerk of Court to serve a copy of this Order upon Plaintiff **AND** non-party Waseem Daker.

SO ORDERED, this 31 day of October, 2017.

HON. LISA GODBEY WOOD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

KASIM GANDY,

Plaintiff,

v.

TOM GRAMIAK; EDWINA JOHNSON; JOHN BOYETT; NATHAN BROOKS; WILLIAM STEEDLY; AUSTIN ADAMS; KIMBERLY LOWE; and UNIT MANAGER COX,

Defendants.

CIVIL ACTION NO.: 5:16-cv-44

ORDER

Presently before the Court is inmate and non-party Waseem Daker's ("Daker") Motion for Intervention, (doc. 36), Plaintiff's Motion for Extension of Time, (doc. 37), and Defendants' Boyett and Brooks' Motion for Extension of Time, (doc. 38). For the reasons which follow, the Court **DENIES** Daker's Motion, **GRANTS IN PART** Plaintiff's Motion, and **DENIES AS MOOT** Defendants' Motion.

I. Daker's Motion for Intervention, (doc. 36), and Defendants' Motion for Extension of Time, (doc. 38)

Plaintiff filed this *in forma pauperis* action on June 9, 2016, pursuant to 42 U.S.C. § 1983. (Doc. 1.) After the Court conducted the requisite frivolity review, Plaintiff was allowed to proceed with his due process and First Amendment claims. (Docs. 10, 14.) On February 16, 2017, Daker filed his Motion for Intervention. (Doc. 36.)

Rule 24 of the Federal Rules of Civil Procedure allows a non-party to intervene in an ongoing action if certain conditions, laid out by the Rule, are met. Fed. R. Civ. P. 24. Daker

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seeking to intervene and become a party to this case is akin to multiple prisoner-plaintiffs seeking to proceed *in forma pauperis* ("IFP") in the same cause of action. The Eleventh Circuit Court of Appeals has considered the issue of whether "the Prisoner Litigation Reform Act ["PLRA"] permits multi-plaintiff [IFP] civil actions." Hubbard v. Haley, 262 F.3d 1194, 1196 (11th Cir. 2001). In Hubbard, the Court of Appeals noted that "the intent of Congress in promulgating the PLRA was to curtail abusive prisoner tort, civil rights and conditions of confinement litigation." Id. (citing Anderson v. Singletary, 111 F.3d 801, 805 (11th Cir. 1997)). After interpreting the PLRA, the Eleventh Circuit upheld a district court's dismissal of a multiple-prisoner/plaintiff lawsuit wherein the plaintiffs sought to proceed *in forma pauperis* together. The Eleventh Circuit concluded that "the PLRA clearly and unambiguously requires that 'if a prisoner brings a civil action or files an appeal [IFP], the prisoner shall be required to pay the full amount of the filing fee.'" Id. at 1197 (citing 28 U.S.C. § 1915(b)(1)). Specifically, the Eleventh Circuit affirmed the following procedure:

> The district court never reached the merits of the case, but instead dismissed the case, finding that each plaintiff had to file a separate complaint and pay a separate filing fee. To facilitate its ruling, the district court indicated that it would open a new suit with a separate number in each of the plaintiff's names and consider the original complaint to be their complaints. The majority of the 18 plaintiffs had already filed separate petitions to proceed IFP. The court directed each of the remaining plaintiffs to file his own form complaint and petition to proceed IFP. The court then dismissed the original multi-plaintiff complaint without prejudice.

Id. Ultimately, the Eleventh Circuit determined that "the plain language of the PLRA requires that each prisoner proceeding IFP pay the full filing fee[.]" Id.

Plaintiff is proceeding *in forma pauperis* in this action. Allowing Daker to intervene in this action would circumvent the Congressional purpose in promulgating the PLRA. Id. at 1197–98. That is, "[t]he modest monetary outlay will force prisoners to think twice about the case and not just file reflexively." Id. at 1198 (quoting 141 Cong. Rec. S7526 (May 25, 1995) (statement

of Sen. Kyle)). Additionally, allowing Daker to intervene would directly contradict the Eleventh Circuit's conclusion that "the PLRA clearly and unambiguously requires that 'if a prisoner brings a civil action or files an appeal [IFP], the prisoner shall be required to pay the full amount of the filing fee.'" Id. at 1197 (citing 28 U.S.C. § 1915(b)(1)); see also Bowens v. Turner Guilford Knight Det., 510 F. App'x 863 (11th Cir. 2013) (affirming dismissal of complaint under Hubbard, in which six inmates joined claims in a single suit); Garcia v. McNeil, No. 4:07CV474-SPM/WCS, 2010 WL 4823370, at *2 (N.D. Fla. Aug. 12, 2010), *report and recommendation adopted*, No. 4:07-CV-474-SPM WCS, 2010 WL 4818067 (N.D. Fla. Nov. 22, 2010) ("Hubbard decided that since every prisoner must pay a full filing fee, and since other litigants who join together in one complaint pay only one filing fee, prisoners cannot join under Rule 20. That means that the prisoners here, who have a lawyer and who do not pursue frivolous claims, cannot join under Rule 20 in light of Hubbard—even if each of them pays [the filing fee]. This court is bound by Hubbard.").

Eleventh Circuit law clearly prohibits multiple prisoner plaintiffs from proceeding *in forma pauperis* in the same civil action.[1] Consequently, the Court **DENIES** Daker's Motion for Intervention, (doc. 36), and **DENIES AS MOOT** Defendants' Boyett and Brooks' Motion for Extension of Time to File Response to Daker's Motion, (doc. 38).

II. Plaintiff's Motion for Extension of Time (Doc. 37)

Plaintiff requests additional time to "research and prepare his defense." (Doc. 37, p. 1.) The Court construes this as a Motion for Extension of Time to Respond to Defendants' Boyett

[1] Even if such clear precedent did not exist, Daker would still be prohibited from proceeding. Daker asserts that he has a "direct, substantial, legally protectable interest in the proceedings" because he is also an inmate in the Georgia Department of Correction's Tier II program. (Doc. 41, p. 3.) This broad, conclusory assertion is insufficient to meet the requirements set out by Federal Rules of Civil Procedure Rule 24 for either intervention as a matter of right or permissive intervention. Fed. R. Civ. P. 24(a)(2) & (b)(2).

and Brooks' Motion to Dismiss.[2] After careful consideration, the Court **GRANTS IN PART** Plaintiff's Motion.

THEREFORE, IT IS HEREBY ORDERED that the deadline for Plaintiff to respond to Defendants' Motion to Dismiss, (doc. 34), is extended for a period of **twenty-one (21) days** from the date of this Order, up to and including **March 21, 2017**. Plaintiff is forewarned that, if he does not file an opposition to Defendants' Motion by that date, the Court will consider the Motion unopposed.

SO ORDERED, this 28th day of February, 2017.

R. STAN BAKER
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

[2] "Federal courts sometimes will ignore the legal label that a *pro se* litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category." Retic v. United States, 215 F. App'x 962, 964 (11th Cir. 2007) (quoting Castro v. United States, 540 U.S. 375, 381 (2003)). Federal courts "may do so in order to avoid an unnecessary dismissal, to avoid inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a *pro se* motion's claim and its underlying legal basis." Id. (quoting Castro, 540 U.S. at 381–82).

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

KASIM GANDY,

Plaintiff,

v.

TOM GRAMIAK,

Defendants.

CIVIL ACTION NO.: 5:16-cv-44

ORDER and MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Presently before the Court is non-party Waseem Daker's ("Daker") Motion for Reconsideration of the Court's Order dated February 28, 2017. (Doc. 55.) For the reasons set forth below, the Court **DENIES** Daker's Motion for Reconsideration. Additionally, I **RECOMMEND** that the Court **DENY** Daker leave to proceed *in forma pauperis* on appeal. The Court **DIRECTS** the Clerk of Court to serve a copy of this Order and Report and Recommendation upon Plaintiff **AND** non-party Waseem Daker.

BACKGROUND

On February 3, 2017, Daker filed a Motion to Intervene in this case. (Doc. 36.) Daker argued that he should be allowed to intervene as a matter of right under Federal Rules of Civil Procedure Rule 24(a) and permissively under Rule 24(b). (Id. at p. 2.) Daker contended that intervention was proper for his claims that his placement in the Tier II program at Georgia State Prison violates his substantive and procedural due process rights. As support, Daker conclusively asserted that: his Motion was timely filed; he has a "direct, substantial, legally protectable interest in the proceedings" by nature of his status as a prisoner in the Tier II

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segregation program; the disposition of this case would impair his ability to protect his interest due to *stare decisis*; and Plaintiff would not adequately represent his interests. (Id. at pp. 2–4.)

On February 28, 2017, the Court denied Daker's Motion to Intervene. (Doc. 39). The Court advised Daker that the Prison Litigation Reform Act ("PLRA") disallows multiple-prisoner/plaintiff lawsuits wherein the prisoners/plaintiffs seek to proceed *in forma pauperis* together. (Id. at p. 2.) Specifically, the Court informed Daker that a prisoner wishing to bring a civil action *in forma pauperis* must pay the full amount of the filing fee.[1] (Id.)

In his instant Motion, Daker restates the arguments from his Motion to Intervene and further argues that intervention is allowed because neither the PLRA nor Hubbard v. Haley, 262 F.3d 1194 (11th Cir. 2001), applies to motions brought pursuant to Rule 24.

DISCUSSION

I. Motion for Reconsideration (Doc. 55)

A motion for reconsideration, or a Federal Rule of Civil Procedure 59(e) motion, is "an extraordinary remedy, to be employed sparingly." Smith ex rel. Smith v. Augusta-Richmond Cty., No. CV 110-126, 2012 WL 1355575, at *1 (S.D. Ga. Apr. 18, 2012) (internal citation omitted). "A movant must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." Id. (internal citation omitted). "The only grounds for granting a Rule 59 motion are newly-discovered evidence or manifest errors of law or fact." Jacobs v. Tempur-Pedic Intern., Inc., 626 F.3d 1327, 1344 (11th Cir. 2010) (quoting In re Kellogg, 197 F.3d 1116, 1119 (11th Cir. 1999) (internal punctuation omitted)). "A Rule 59(e) motion cannot be used to relitigate old matters, raise argument or present evidence that could

[1] The Court notes that this is not the first case in this District where Daker has sought and been denied intervention. See Orders, Daniels v. Upton, et al., 6:16-cv-94-JRH-RSB (S.D. Ga. Feb. 17, 2017 & Mar. 27, 2017) ECF Nos. 43, 46.

have been raised prior to the entry of judgment." Id. (quoting Michael Linet, Inc. v. Village of Wellington, 408 F.3d 757, 763 (11th Cir. 2005) (alterations omitted)).

The Court discerns no reason to grant Daker's Motion for Reconsideration. Here, Daker does not present any newly- discovered evidence or manifest errors of law or fact. Daker simply attempts to argue that Hubbard does not apply to Rule 24 motions, and that even if it did, the United States Supreme Court's decision in Jones v. Bock, 549 U.S. 199 (2007), overruled Hubbard. However, both these arguments are without merit.[2]

While it is true that the Eleventh Circuit Court of Appeals addressed joinder rather than intervention in Hubbard, the reasoning and analysis behind Hubbard remain true for intervention under Rule 24. That is, in order to curtail abusive prisoner tort, civil rights, and conditions of confinement litigation, "[T]he PLRA clearly and unambiguously requires that 'if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee.'" Hubbard, 262 F.3d at 1197 (quoting 28 U.S.C. § 1915(b)(1)). Additionally, "the Congressional purpose in promulgating the PLRA enforces an interpretation that each prisoner pay the full filing fee." Id. at 1197–98. In fact, the Court's reasoning in Hubbard is especially appropriate in this case. Daker, a known serial litigant in this district and others, has been denied *in forma pauperis* status on multiple occasions pursuant to 28 U.S.C. § 1915(g), the PLRA's three-strikes provision.[3] See Daker v. Bryson, et al., No. 6:16-cv-57-JRH-RSB, 2017 WL 242615, at *3 (S.D. Ga. Jan. 19, 2017), *report and recommendation*

[2] Jones addressed the administrative exhaustion requirement of the PLRA and is inapplicable to the Court's denial of Daker's Motion to Intervene.

[3] "In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner 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 is frivolous, malicious, or fails 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).

adopted by No. 6:16-cv-57-JRH-RSB, 2017 WL 1053082 (S.D. Ga. Mar. 20, 2017). His Motion to Intervene in this case is a blatant attempt to circumvent the requirements of the PLRA and is precisely the type of behavior the PLRA sought to curtail.

The Court sees no error in its analysis denying Daker's Motion to Intervene, much less manifest error warranting reconsideration. Accordingly, the Court **DENIES** Daker's Motion for Reconsideration, (doc. 55).

II. Leave to Appeal *in Forma Pauperis*

Additionally, the Court should **DENY** Daker *in forma pauperis* status on appeal. Though Daker has, of course, not yet filed a notice of appeal, it would be appropriate to address these issues in the Court's order of dismissal. Fed. R. App. P. 24(a)(3) (trial court may certify that appeal is not taken in good faith "before or after the notice of appeal is filed").

An appeal cannot be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). Good faith in this context must be judged by an objective standard. Busch v. Cty. of Volusia, 189 F.R.D. 687, 691 (M.D. Fla. 1999). A party does not proceed in good faith when he seeks to advance a frivolous claim or argument. See Coppedge v. United States, 369 U.S. 438, 445 (1962). A claim or argument is frivolous when it appears the factual allegations are clearly baseless or the legal theories are indisputably meritless. Neitzke v. Williams, 490 U.S. 319, 327 (1989); Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993). Stated another way, an *in forma pauperis* action is frivolous, and thus, not brought in good faith, if it is "without arguable merit either in law or fact." Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002); see also Brown v. United States, Nos. 407CV085, 403CR001, 2009 WL 307872, at *1–2 (S.D. Ga. Feb. 9, 2009).

Based on the above analysis of Daker's Motion and the Court's February 28, 2017, Order, (doc. 39), there are no non-frivolous issues to raise on appeal, and an appeal would not be taken in good faith. Thus, the Court should **DENY** Daker *in forma pauperis* status on appeal.

CONCLUSION

For the above-stated reasons, the Court **DENIES** Daker's Motion for Reconsideration. (Doc. 55.) Additionally, I **RECOMMEND** that the Court **DENY** Daker leave to proceed *in forma pauperis* on appeal.

The Court **ORDERS** any party seeking to object to this Report and Recommendation to file specific written objections within fourteen (14) days of the date on which this Report and Recommendation is entered. Any objections asserting that the Magistrate Judge failed to address any contention raised in the Complaint must also be included. Failure to do so will bar any later challenge or review of the factual findings or legal conclusions of the Magistrate Judge. See 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140 (1985). A copy of the objections must be served upon all other parties to the action. The filing of objections is not a proper vehicle through which to make new allegations or present additional evidence.

Upon receipt of Objections meeting the specificity requirement set out above, a United States District Judge will make a *de novo* determination of those portions of the report, proposed findings, or recommendation to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the Magistrate Judge. Objections not meeting the specificity requirement set out above will not be considered by a District Judge. A party may not appeal a Magistrate Judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. Appeals may be made only from a final judgment entered by or at the direction of a District Judge. The Court **DIRECTS** the Clerk of

Court to serve a copy of this Report and Recommendation upon Plaintiff **AND** non-party Waseem Daker.

SO ORDERED and **REPORTED and RECOMMENDED**, this 16th day of June, 2017.

R. STAN BAKER
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-15228-AA

KASIM GANDY,

Plaintiff,

WASEEM DAKER,

Interested Party - Appellant,

versus

HOMER BRYSON, et al,

Defendants,

WARDEN, WARE STATE PRISON,
NATHAN BROOKS,
Tier II Program Unit Manager Ware State Prison,
in his official capacity,
WILLIAM STEEDLY,
Lt of Administrative Segregation Ware State Prison,
in his official capacity,
KIMBERLY LOWE,
Correctional Counselor Ware State Prison,
in her official capacity,
COX,
Tier II Program Unit Manager Ware State Prison,
in his/her official capacity,

Defendants - Appellees.

APPENDIX E

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JORDAN, LAGOA, and HULL, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

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