

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

SYLVESTER O. BARBEE
ADC #131311

PLAINTIFF

v.

Case No. 5:18-cv-00113 KGB-JTK

JASON BOYD, *et al.*

DEFENDANTS

ORDER

The Court has reviewed the Proposed Findings and Recommendations submitted by United States Magistrate Judge Jerome T. Kearney (Dkt. No. 10). Plaintiff Sylvester O. Barbee filed untimely objections, but the Court will consider them (Dkt. No. 18). After careful consideration of the Proposed Findings and Recommendations, Mr. Barbee's objections, and a *de novo* review of the record, the Court concludes that the Proposed Findings and Recommendations should be, and hereby are, approved and adopted in their entirety as this Court's findings over Mr. Barbee's objections (Dkt. No. 18). Accordingly, the Court dismisses with prejudice Mr. Barbee's claims against defendants Cheryl Ellis and Aundrea Weekly. Mr. Barbee may proceed with his remaining claims.

It is so ordered this 5th day of September, 2019.



Kristine G. Baker
United States District Judge

MIME-Version:1.0 To:ared_ecf@localhost.localdomain Message-Id:<8441057@ared.uscourts.gov> Subject:Activity in Case 5:18-cv-00113-KGB Barbee v. Boyd et al Order Adopting Report and Recommendations Content-Type: text/html

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U.S. District Court

Eastern District of Arkansas

Notice of Electronic Filing

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Case Name: Barbee v. Boyd et al

Case Number: 5:18-cv-00113-KGB

Filer:

Document Number: 100

Docket Text:

ORDER adopting [94] Proposed Findings and Recommendations; granting [81] Defendants' motion for summary judgment; denying [92] Mr. Barbee's cross motion for summary judgment; dismissing without prejudice Mr. Barbee's claims against separate defendant Angelika Smarjesse; dismissing with prejudice Mr. Barbee's claims against separate defendant Jason Boyd; dismissing without prejudice Mr. Barbee's claims against all Doe defendants; and denying as moot [98],[99] Mr. Barbee's motions for status. Signed by Judge Kristine G. Baker on 12/30/2019. (jhb)

5:18-cv-00113-KGB Notice has been electronically mailed to:

Renae Ford Hudson renae.hudson@arkansasag.gov, agcivil@arkansasag.gov, katie.wilson@arkansasag.gov

5:18-cv-00113-KGB Notice has been delivered by other means to:

Sylvester O Barbee
ADC #131311
VARNER SUPERMAX
Arkansas Department of Correction
Post Office Box 600
Grady, AR 71644

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP_dcecf\$stamp_ID=1095794525 [Date=12/30/2019] [FileNumber=8441055-0] [61872055ed4a0843976d1772d92f1683249435251f760c167509baf792fd422419e69dd7bef427b6f72df6c99d5fef0b6cb953a22c72f69d7e153a0c369a2e]]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

**SYLVESTER O. BARBEE,
ADC #131311**

PLAINTIFF

v.

Case No. 5:18-cv-00113-KGB-JTK

JASON BOYD, *et al.*

DEFENDANT

ORDER

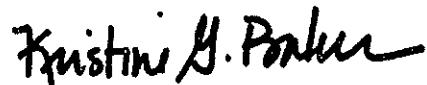
The Court has received the Proposed Findings and Recommendations submitted by United States Magistrate Judge Jerome Kearney (Dkt. No. 94). Plaintiff Sylvester O. Barbee filed an objection to the Proposed Findings and Recommendations (Dkt. No. 96). After a review of the Proposed Findings and Recommendations and Mr. Barbee's objections, as well as a *de novo* review of the record, the Court adopts the Proposed Findings and Recommendations in their entirety as this Court's findings in all respects (Dkt. No. 94). Mr. Barbee's motions for status are denied as moot (Dkt. Nos. 98, 99).

In his objection, Mr. Barbee claims in part that, "Judge Kearney has been bias on his judgments against the plaintiff throughout the whole process." (Dkt. No. 96, at 2-3). A judge is presumed to be impartial, and a party challenging that impartiality bears the substantial burden of proving otherwise. *Pope v. Federal Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992). Mr. Barbee sets forth no facts to support this claim, and the Court does not find any evidence to suggest that Judge Kearney was biased in this case. The remainder of Mr. Barbee's objections restate claims that he raised in previous filings, which Judge Kearney properly addressed in the Proposed Findings and Recommendations (Dkt. No. 94). For these reasons, the Court adopts the Proposed Findings and Recommendations as its findings in all respects.

It is therefore ordered that.

1. Defendants' motion for summary judgment is granted (Dkt. No. 81);
2. Mr. Barbee's cross motion for summary judgment is denied (Dkt. No. 92);
3. Mr. Barbee's claims against separate defendant Angelika Smarjesse are dismissed without prejudice for failure to exhaust;
4. Mr. Barbee's claims against separate defendant Jason Boyd are dismissed with prejudice;
5. Mr. Barbee's claims against all Doe defendants are dismissed without prejudice; and
6. Mr. Barbee's motions for status are denied as moot (Dkt. Nos. 98, 99).

It is so ordered this 30th day of December, 2019.



Kristine G. Baker
United States District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

SYLVESTER O. BARBEE,
ADC #131311

PLAINTIFF

v.

Case No. 5:18-cv-00113-KGB-JTK

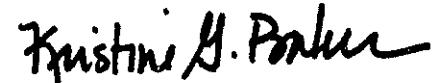
JASON BOYD, *et al.*

DEFENDANT

JUDGMENT

Pursuant to the Order entered on this date and pursuant to this Court's prior Orders, it is considered, ordered, and adjudged that plaintiff Sylvester O. Barbee's complaint is dismissed. The relief requested is denied.

It is so adjudged this 30th day of December, 2019.



Kristine G. Baker
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1261

Sylvester Barbee

Appellant

v.

Jason Boyd, Poultry/Swine Company Inspector, Cummins Unit, ADC, et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:18-cv-00113-KGB)

ORDER

23.

Sylvester Barbee's motion for appointment of counsel is hereby ordered taken with the
case for consideration by the panel to which this case is submitted for disposition on the merits.

June 26, 2020

APP. OF COUNSEL HAS BEEN REFERRED, AS TO THE PANEL TAKING THIS CASE FOR
CONSIDERATION, TO SERVICE THAT THIS CASE HAS BEEN
SELECTED FOR DISPOSITION THE MERITS.
4. Order Entered Under Rule 27A(a);
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1261

Sylvester Barbee

Plaintiff - Appellant

v.

Jason Boyd, Poultry/Swine Company Inspector, Cummins Unit, ADC

Defendant - Appellee

Troy Moore, Physician; Cheryl Ellis, Inspector, Cummins Unit, ADC; Aundrea Weekly, Safety and Sanitation Officer, Cummins Unit, ADC

Defendants

Angelika Smarjessi, Food Preparation & Service Manager, Cummins Unit, ADC

Defendant - Appellee

Doe, 2012 Henhouse Sanitation Inspector

Defendant

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:18-cv-00113-KGB)

JUDGMENT

Before COLLTON, GRUENDER, and GRASZ, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

August 07, 2020

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 20-1261

Sylvester Barbee

Appellant

v.

Jason Boyd, Poultry/Swine Company Inspector, Cummins Unit, ADC

Appellee

Troy Moore, Physician, et al.

Angelika Smarjessi, Food Preparation & Service Manager, Cummins Unit, ADC

Appellee

Doe, 2012 Henhouse Sanitation Inspector

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:18-cv-00113-KGB)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

October 01, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1261

Sylvester Barbee

Appellant

v.

Jason Boyd, Poultry/Swine Company Inspector, Cummins Unit, ADC

Appellee

Troy Moore, Physician, et al.

Angelika Smarjessi, Food Preparation & Service Manager, Cummins Unit, ADC

Appellee

Doe, 2012 Henhouse Sanitation Inspector

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:18-cv-00113-KGB)

MANDATE

In accordance with the opinion and judgment of 08/07/2020, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

October 08, 2020

Clerk, U.S. Court of Appeals, Eighth Circuit

* NOTE: INMATE (S) THAT FILED
LASS ACTION AT TOWER, etc. WON
THEIR CLAIM ON SALMOUELLE EPID.

**United States Court of Appeals
For The Eighth Circuit**
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

**VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov**

July 10, 2020

Mr. Sylvester Barbee
VARNER CORRECTIONAL FACILITY
131311
P.O. Box 600
Grady, AR 71644-0600

RE: 20-1261 Sylvester Barbee v. Jason Boyd, et al

Dear Mr. Barbee:

Please be advised the caption in the above-referenced appeal has been revised. The parties of Troy Moore, Cheryl Ellis, Aundrea Weekly and Doe are now listed as defendants only and are not appellees to this appeal.

The new updated caption is enclosed. Please use this new caption on all future correspondence and pleading with this Court.

Michael E. Gans
Clerk of Court

CMH

Enclosure(s)

cc: Ms. Renae Ford Hudson
Mr. Jim McCormack
Ms. Rosalyn Lynette Middleton

District Court/Agency Case Number(s): 5:18-cv-00113-KGB

**Additional material
from this filing is
available in the
Clerk's Office.**