

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-40135

FREDDIE FOUNTAIN,

Plaintiff - Appellant

v.

WARDEN JOHN A. RUPERT; LARRY G. DOYLE; PAM PACE; BENNIE
COLEMAN; EDWIN ATCHISON, Major; PAUL SHRODE, Medical Doctor,
University of Texas Medical Branch; MICHAEL BEIL, Food Service
Manager/Captain,

Defendants - Appellees

Appeal from the United States District Court
for the Eastern District of Texas

Before PRADO, ELROD, and GRAVES, Circuit Judges.

PER CURIAM:

A member of this panel previously denied appellant's motions to proceed In Forma Pauperis in Accordance with the Prison Litigation Reform Act; to file appellant's brief; place motion under seal, appoint counsel, and to supplement the record on appeal; to expedite the appeal. The panel has considered appellant's motion for reconsideration of the denial of the motion to proceed In Forma Pauperis. IT IS ORDERED that the motion is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FREDDIE FOUNTAIN	§	
v.	§	CIVIL ACTION NO. 6:13cv958
RICK THALER, ET AL.	§	

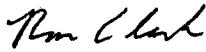
FINAL JUDGMENT

The above-styled civil rights lawsuit having come before the Court for consideration, and a decision having been duly rendered, it is hereby

ORDERED that the above-entitled and numbered cause of action is **DISMISSED WITHOUT PREJUDICE**.

So Ordered and Signed

Feb 2, 2017



Ron Clark, United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FREDDIE FOUNTAIN §
v. § CIVIL ACTION NO. 6:13cv958
RICK THALER, ET AL. §

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Freddie Fountain, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. The lawsuit was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On January 6, 2017, Fountain filed a motion asking that his lawsuit be dismissed without prejudice. Fed. R. Civ. P. 41(a) permits plaintiffs to dismiss their actions without need for leave of court by either filing a notice of dismissal prior to service of a responsive pleading or by filing a stipulation of dismissal signed by all parties. Fed. R. Civ. P. 41(a)(2) states that except as provided in Rule 41(a)(1), an action shall not be dismissed at the plaintiff's instance except upon order of court and upon such terms as the court deems proper.

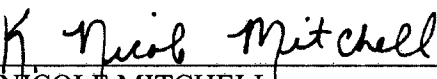
In this case, Fountain has asked that his lawsuit be dismissed without prejudice. The Court has determined that this request should be granted.

RECOMMENDATION

It is accordingly recommended that the Plaintiff's request for voluntary dismissal of his lawsuit (docket no. 288) be granted and that the above-styled civil action be dismissed without prejudice.

A party's failure to file objections to the findings, conclusions, and recommendations contained in this Report within 14 days after service with a copy thereof shall bar that party from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

So ORDERED and SIGNED this 10th day of January, 2017.



K. NICOLE MITCHELL
UNITED STATES MAGISTRATE JUDGE

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