
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH- CENTRAL DIVISION

JOSEPH ANTHONY CASTELLANO,
Plaintiff,

v.

L. LEWIS and FNU SWARTZ,
Defendants.

**ORDER ADOPTING MAGISTRATE
JUDGE'S RECOMMENDATION**

Case No. 2:14-CV-619-RJS-EJF

Judge Robert J. Shelby

Magistrate Judge Evelyn J. Furse

Plaintiff Joseph Castellano filed this civil rights action against two Lehi City, Utah law enforcement officers pursuant to 42 U.S.C. § 1983. (Dkt. 3.) Mr. Castellano alleges the officers violated his Fourth Amendment rights when he was the subject of a traffic stop and detained for several minutes so that a drug-sniffing dog could be transported to the scene to search Mr. Castellano's vehicle. This court referred the case to Magistrate Judge Evelyn J. Furse on September 10, 2014 pursuant to 28 U.S.C. § 636(b)(1)(B). (Dkt. 7.)

On December 29, 2015, Judge Furse filed a Report and Recommendation. (Dkt. 34.) Judge Furse recommended: 1) that the court grant a Motion for Summary Judgment (Dkt. 20) filed by one Defendant, Officer Levi Lewis, on the grounds that he is entitled to qualified immunity for the claims asserted against him; and 2) dismiss sua sponte Mr. Castellano's Complaint against the other Defendant, FNU Swartz, for failure to effectuate proper service as required by Rule 4, Federal Rule of Civil Procedure. For two reasons, the court concludes that it will adopt in full Judge Furse's Recommendation.

First, Mr. Castellano has failed to file a timely objection to any part of Judge Furse's Recommendation. Pursuant to Rule 72(b)(2), Federal Rules of Civil Procedure, Judge Furse

stated in her Recommendation that any objection must be filed within fourteen days of service. Twenty-two days have passed since Judge Furse's Recommendation was served, and Mr. Castellano has filed no objection. Any objection he might file at this point would be untimely. *See* FED. R. CIV. P. 72(b)(2) ("Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations.").

Second, this court's own careful review of the filings in this case leads it to conclude that Judge Furse's Recommendation is legally correct. The court agrees with Judge Furse's determination that Officer Lewis has established under the applicable law, and with well-supported and particular citations to evidentiary materials, that he enjoys qualified immunity for the claims against him stemming from the traffic stop and investigatory detention. Officer Lewis is therefore entitled to summary judgment. Further, Mr. Castellano's failure to serve FNU Swartz in a timely manner warrants dismissal of the Complaint. Rule 4(m) provides that service on a defendant must be completed within 120 days, or the court must either dismiss the action without prejudice or order that service be completed within a specific time. There is no return of service on the court's docket indicating that Defendant Swartz has been served, though the Complaint was filed seventeen months ago.

Accordingly, the court ORDERS as follows:

1. Judge Furse's Recommendation (Dkt. 34) is ADOPTED IN FULL.
2. Officer Lewis's Motion for Summary Judgment (Dkt. 20) is GRANTED.
3. Mr. Castellano's Complaint against FNU Swartz is DISMISSED for failure to effect proper service as required by Rule 4, Federal Rules of Civil Procedure.
4. The Clerk of Court is directed to close this case.

5. Each party shall bear its own costs and fees.

SO ORDERED this 20th day of January, 2015.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'R. J. Shelby', written over a horizontal line.

ROBERT J. SHELBY
United States District Judge