

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

DAVID BRYANT WICKS,

Plaintiff,

Case No. 3:17-cv-718-J-34PDB

vs.

LENA POWELL, et al.,

Defendants.

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**ORDER**

**THIS CAUSE** is before the Court on the Report & Recommendation (Dkt. No. 24; Report), entered by the Honorable Patricia D. Barksdale, United States Magistrate Judge, on December 5, 2017. In the Report, Judge Barksdale recommends that this case be dismissed without prejudice. See Report at 18-19. Plaintiff has failed to file objections to the Report, and the time for doing so has now passed.<sup>1</sup>

The Court “may accept, reject, or modify, in whole or in part, the finding or recommendations by the magistrate judge.” 28 U.S.C. § 636(b). If no specific objections to findings of facts are filed, the district court is not required to conduct a de novo review of those findings. See Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993); see

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<sup>1</sup> Instead of filing an objection, on December 18, 2017, Wicks filed a Notice of Appeal (Dkt. No. 26). Because the Court had not yet acted on the Report, it remained a non-final, non-appealable order, and any attempt to appeal it was premature. See Perez-Priego v. Alachua Cty. Clerk of Court, 148 F.3d 1272 (11th Cir. 1998) (citing Donovan v. Sarasota Concrete Co., 693 F.2d 1061, 1066-67 (11th Cir. 1982)). The filing of a premature notice appealing a non-appealable order does not deprive the district court of jurisdiction. See McLaughlin v. City of LaGrange, 662 F.2d 1385, 1387 (11th Cir. 1981). See also United States v. Hitchmon, 602 F.2d 689, 694 (5th Cir. 1979) (en banc) (holding that a prematurely filed notice of appeal does not have an effect on the district court's jurisdiction), superseded by statute on other grounds as recognized in United States v. Martinez, 763 F.2d 1297, 1308, n. 11 (11th Cir. 1985). As such, the Court will proceed to consider the Report.

also 28 U.S.C. § 636(b)(1). However, the district court must review legal conclusions de novo. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); United States v. Rice, No. 2:07-mc-8-FtM-29SPC, 2007 WL 1428615, at \*1 (M.D. Fla. May 14, 2007).

Upon independent review of the file and for the reasons stated in the Magistrate Judge's Report, the Court will accept and adopt the legal and factual conclusions recommended by the Magistrate Judge. Accordingly, it is hereby

**ORDERED:**

1. The Magistrate Judge's Report and Recommendation (Dkt. No. 24) is **ADOPTED** as the opinion of the Court.
2. This case is **DISMISSED without prejudice**.
3. The Clerk of Court is directed to terminate all pending motions and deadlines as moot and close the file.

**DONE AND ORDERED** in Jacksonville, Florida, this 22nd day of January, 2018.

  
MARCIA MORALES HOWARD  
United States District Judge

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Copies to:

Counsel of Record  
Pro Se Party