

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

JAMES FISHER,

Plaintiff,

v.

CASE NO. 3:23-cv-1399-MMH-JBT

STATE OF FLORIDA, et al.,

Defendants.

\_\_\_\_\_ /

**REPORT AND RECOMMENDATION**

**THIS CAUSE** is before the Court on *pro se* Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) ("Motion") (Doc. 5). For the reasons stated herein, the undersigned respectfully **RECOMMENDS** that the Motion be **DENIED** and the case be **DISMISSED without prejudice**.

In its prior Order (Doc. 6), the Court took the Motion under advisement and stated that Plaintiff's Complaint (Doc. 1), even liberally construed, was deficient in several respects. In the Complaint, Plaintiff alleges that his "same sex husband," Simon C. Tully, was beaten by several officers in jail after being arrested for attacking Plaintiff. (Doc. 1 at 3.) Plaintiff sues the State of Florida and a circuit court judge requesting the release of Mr. Tully and \$750,000 in damages for "undue stress." (*Id.* at 4.) The Court in its prior Order recognized that "Plaintiff fails to state a claim against either Defendant or allege how they might be liable to Plaintiff." (Doc. 6 at 4.) Further, the Court stated that "[t]o the extent Plaintiff is

attempting to bring this action on behalf of another person, he likely lacks standing to do so.” See *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166 (1972). (*Id.* at 3.)

Therefore, Plaintiff was ordered to “file an amended complaint in compliance with [the prior] Order” on or before January 24, 2024. (*Id.*) Plaintiff was cautioned that “if [he] fails to do so, the undersigned will recommend that the District Judge deny the Motion and dismiss this action.” (*Id.*) To date, Plaintiff has not filed an amended complaint or taken any other action regarding this case. Accordingly, the undersigned recommends that this case be dismissed for Plaintiff’s failure to state a claim on which relief may be granted, failure to prosecute, and lack of standing.

Accordingly, it is respectfully **RECOMMENDED** that:

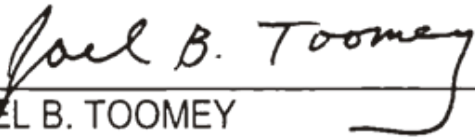
1. The Motion (**Doc. 5**) be **DENIED**.
2. The case be **DISMISSED without prejudice**.
3. The Clerk of Court be directed to terminate any pending motions and close the file.

#### **Notice to Plaintiff**

“Within 14 days after being served with a copy of [this Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2). “A party may respond to another party’s objections within 14 days after being served with a copy.” *Id.* A party’s failure to serve and file specific objections to the proposed findings and recommendations alters the scope of review by the District Judge and

the United States Court of Appeals for the Eleventh Circuit, including waiver of the right to challenge anything to which no specific objection was made. See Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1)(B); 11th Cir. R. 3-1.

**DONE AND ENTERED** in Jacksonville, Florida, on February 7, 2024.

  
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JOEL B. TOOMEY  
United States Magistrate Judge

Copies to:

The Honorable Marcia Morales Howard  
United States District Judge

*Pro Se* Plaintiff