

DJW/bh

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

GARY J. BELL,

Plaintiff,

Civil Action

No. 04-3248-KHV-DJW

v.

L. E. Bruce, et al.,

Defendants.

REPORT AND RECOMMENDATION

NOTICE

Within ten days after the parties are served with a copy of this Report and Recommendation, any party may, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72, file written objections to the Report and Recommendation. A party must file any objections within the ten-day period allowed if that party wants to have appellate review of the proposed findings of fact, conclusions of law, or recommended disposition. If no objections are timely filed, no appellate review will be allowed by any court.

REPORT AND PROPOSED FINDINGS

Pending before the Court is Plaintiff's Motion for Leave to Proceed in Forma Pauperis (doc. 20). Based upon the Tenth Circuit's recent decision in *Lister v. Department of the Treasury*,¹ the undersigned

¹408 F.3d 1309 (10th Cir. 2005). In *Lister*, the Tenth Circuit held that magistrate judges have no authority to enter an order denying *in forma pauperis* status because such a ruling is dispositive. *Id.* at 1311-12.

Magistrate Judge submits to the District Judge the following Report and Recommendation regarding Plaintiff's motion.

28 U.S.C. § 1915(a) sets forth the circumstances under which an individual is allowed to bring proceedings *in forma pauperis*. That statute provides that "any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding . . . without prepayment of fees or security therefor, by a person who submits an affidavit . . . that the person is unable to pay such fees or give security therefor."

RECOMMENDATION

Here, Plaintiff paid the filing fee on August 10, 2004. Thus, there is no reason for the Court to grant Plaintiff *in forma pauperis* status, and the undersigned Magistrate Judge recommends that the District Court find Plaintiff's motion to be moot.

Respectfully submitted.

Dated in Kansas City, Kansas on this 7th day of July, 2005.

s/ David J. Waxse
David J. Waxse
U.S. Magistrate Judge

cc: All counsel and *pro se* parties