

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DEWAYNE ANDERSON,

Plaintiff,

v.

Case No. 19-1265-JWB

CITY OF WICHITA POLICE DEPARTMENT,
et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on a Report and Recommendation (Doc. 13) by Magistrate Judge Gwynne E. Birzer recommending dismissal of Plaintiff's amended complaint and complaint and denial of Plaintiff's motion to amend. For the reasons stated below, the Recommendation is **ADOPTED** and Plaintiff's amended complaint and complaint are **DISMISSED WITHOUT PREJUDICE**.

Plaintiff filed a complaint on September 30, 2019, containing vague and conclusory allegations that Defendants violated his civil rights. (Doc. 1.) Magistrate Judge Birzer found Plaintiff's complaint did not comply with Fed. R. Civ. 8, in that it failed to allege a basis for any valid claims against Defendants as it was unclear as to the identities of the individual Defendants and the allegations regarding the violation of Plaintiff's rights were conclusory. (Doc. 9.) In the original complaint, Plaintiff alleges that one defendant allegedly paid Plaintiff to illegally dump property which resulted in a conspiracy to set up Plaintiff for some unknown crimes. Magistrate Judge Birzer ordered Plaintiff to file an amended complaint to specify the individual Defendants, his or her addresses or last known addresses, allege facts regarding what each individual Defendant

did, when each Defendant violated his rights, how Plaintiff was harmed, and the basis of the claim against each individual Defendant. (Doc. 9 at 6.)

Plaintiff did timely amend his complaint. (Doc. 11.) Plaintiff has since filed a motion to amend his amended complaint to add two additional defendants. (Doc. 12.) Magistrate Judge Birzer recommended that the action be dismissed and the motion to amend the amended complaint be denied for failure to comply with Rule 8. (Doc. 13.) Plaintiff's amended complaint failed to comply with Judge Birzer's order in that Plaintiff did not cure the identified deficiencies and the amended complaint fails to identify facts regarding what each defendant did. The amended complaint "does not supply enough facts or clearly state how each of the named defendants allegedly violated [Plaintiff's] civil or Constitutional rights." (Doc. 13 at 6.) The proposed second amended complaint does not cure this deficiency. (*Id.*)

The Report and Recommendation notified Plaintiff that he had 14 days after being served with the Report to object to it, and that a failure to timely object was a waiver of appellate review of both factual and legal questions. (Doc. 13 at 12.) A certified mail receipt shows that the Report and Recommendation was served at the Sedgwick County Jail, Plaintiff's current address, on April 6, 2020. (Doc. 14.) Plaintiff filed an objection on April 24. (Doc. 15.) Although the objection is untimely, the court will consider the arguments raised in the objection.

Plaintiff asserts in his objection that he did comply with the court's order and argues that his complaint and amended complaint contain sufficient facts. Plaintiff goes on to assert that Magistrate Judge Birzer is biased against him and that she is operating under a conflict of interest. Plaintiff's unsupported assertions lack merit. Magistrate Judge Birzer gave Plaintiff an opportunity to correct the deficiencies in his complaint and specifically identified how to do so. Nothing in her rulings suggests that she is operating under a conflict of interest or biased in this

matter. Magistrate Judge Birzer is merely applying the Federal Rules of Civil Procedure to Plaintiff's pleadings as she is required to do.

The court finds Plaintiff's complaint and amended complaint fail to comply with Fed. R. Civ. P. 8(a) and that dismissal of this action is appropriate under the circumstances. Plaintiff's proposed amended complaint does not cure the deficiencies identified in this order. Accordingly, the Report and Recommendation (Doc. 13) of the Magistrate Judge is ADOPTED, and Plaintiff's amended complaint is hereby DISMISSED WITHOUT PREJUDICE. Plaintiff's motion to amend (Doc. 12) is DENIED. Although recommended by Magistrate Judge Birzer, the court declines to impose filing restrictions against Plaintiff at this time as he still has two cases pending before other judges of the court. If Plaintiff continues filing cases that fail to comply with the Rules of Civil Procedure, filing restrictions will be imposed.

IT IS SO ORDERED this 29th day of April, 2020.

s/ John W. Broomes
JOHN W. BROOMES
UNITED STATES DISTRICT JUDGE