

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

LARRY NALLS,

Plaintiff, : Case No. 3-21-cv-238

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

STATE OF OHIO, et al.,

:
Defendants.

**DECISION AND ORDER ADOPTING MAGISTRATE JUDGE
REPORT AND RECOMMENDATIONS AND DENYING MOTION
FOR RELIEF FROM JUDGMENT (DOC. NO. 40)**

This civil action, brought *pro se* by Plaintiff Larry Nalls, is before the Court on Plaintiff's Objection ("Objection," Doc. No. 44) to the Magistrate Judge's Report and Recommendation on Motion for Relief from Judgment (Doc. No. 42). The final judgment in this case was entered May 5, 2022 (Doc. No. 38). In entering judgment, the Court adopted the Magistrate Judge's Supplemental Report and Recommendations (Doc. No. 33), accepting the Magistrate Judge's striking of Plaintiff's first objections to that Supplemental Report because it was untimely filed. (Doc. No. 38.) Plaintiff had objected to the Order striking the first objections by claiming the first objections were timely filed.

After final judgment was entered, Plaintiff filed the Motion for Relief from Judgment ("Motion") (Doc. No. 40) and a Notice of Appeal (Doc. No. 41). The Court deferred judgment on the Motion until the court of appeals ruled on Plaintiff's appeal. On October 7, 2022, the court of

appeals dismissed Plaintiff's appeal for want of prosecution. (Doc. No. 47.)

Plaintiff's Motion alleges that the District Court's decision to dismiss his case was obtained by fraud because he timely filed his objections and Magistrate Judge Merz improperly struck those objections. (Doc. No. 40.) In his objection to the Report and Recommendation he further argues that Magistrate Judge Merz lied and misrepresented the record and the rules. (Doc. No. 44.)

Under Fed.R.Civ.P. 72(b), the District Judge is to review *de novo* any portion of a Magistrate Judge's report and recommendation to which substantial objection has been made. Where matters are referred to the Magistrate Judge for the exercise of discretion, review is for abuse of discretion. Magistrate Judge findings of fact may be reversed only if clearly erroneous. Magistrate Judge errors of law are, however, reviewed *de novo*.

The Court has reviewed the findings and conclusions of the Magistrate Judge and has considered *de novo* all of the filings in this case with particular attention to the issues as to which Plaintiff has lodged objections. Having done so, the Court determines that the Magistrate Judge's recommendations should be adopted for the reasons he has given.

The Court finds that Magistrate Judge Merz properly calculated the service date of the Report and Recommendation and the due dates of the objections under Fed.R.Civ.P. 5(b)(2)(C) and Fed.R.Civ.P. 72. The Court also finds there is absolutely no evidence to suggest Magistrate Judge Merz caused the final judgment to be obtained through fraud. Moreover, there is no evidence to suggest Magistrate Judge Merz lied to this Court or misrepresented the rules or the record in his prior Report and Recommendation. Plaintiff's Objection is **OVERRULED** and the Motion for Relief from Judgment is **DENIED**.

DONE and **ORDERED** in Dayton, Ohio, this Wednesday, October 12, 2022.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE