

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

JAMES ALVIN BARNETT,
Plaintiff

VS.

JAMES DONALD, *et al.*,
Defendants

NO. 5:06-CV-225 (CWH)

**PROCEEDINGS UNDER 42 U.S.C. § 1983
BEFORE THE U.S. MAGISTRATE JUDGE**

ORDER

Pending before the court are several motions heretofore filed by plaintiff JAMES ALVIN BARNETT, disposed of as follows:

MOTION FOR PRELIMINARY INJUNCTION/TEMPORARY RESTRAINING ORDER (Tab #7)

Plaintiff's motion for a preliminary injunction and/or temporary restraining order (Tab #7) has been MOOTED by the plaintiff's transfer to Tennessee and is therefore DENIED as such.

MOTION FOR DEFAULT JUDGMENT (Tab #10)

Plaintiff's motion for default (Tab #10) was filed on August 29, 2006. The defendants filed an answer and motion to dismiss on September 13, 2006 (Tabs #13 and #14) before any action on plaintiff's request (which was docketed as a Motion for Default *Judgment*) was taken by the Clerk. Entry of default is a prerequisite to entry of default judgment. Since no entry of default had been made prior to the filing of defendants' answer, entry of default is not now appropriate. Accordingly, plaintiff's motion is DENIED.¹

¹The undersigned notes that in any event, no answer was required of defendants Perdue and Baker until September 18, 2006. See Tabs # 8 and #9.

MOTIONS FOR EMERGENCY HEARING (Tabs #11 and #40)

Also before the court are the plaintiff's two motions for an emergency hearing. Tabs #11 and #40. These motions are DENIED, the undersigned finding that the issues pending before the court can be resolved by reviewing the briefs/evidence submitted by the parties.

RENEWED MOTION FOR APPOINTMENT OF COUNSEL (Tab #31)

For the reasons set forth in the court's previous denial of plaintiff's request for appointment of counsel, plaintiff's renewed motion is DENIED. See Tab #24.

MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT (Tab #41)

Plaintiff Barnett has submitted this motion seeking to add as a defendant an individual whose name he does not know. Neither has plaintiff provided a place where this person could be served in the event the amendment is permitted. Importantly, however, plaintiff has failed to certify that he has served opposing counsel with a copy of his motion. The defendants are entitled to file a response to any and all motions submitted by plaintiff. Without having been provided with a copy of the motion, the defendants cannot respond. Accordingly, plaintiff motion is DENIED.

SO ORDERED AND DIRECTED this 30th day of MARCH, 2007.



A handwritten signature in blue ink, reading "Claude W. Hicks, Jr." in a cursive script.

CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE