IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 19-cv-00752-LTB-GPG

MATTHEW HALE, J.D.,

Plaintiff,

v.

RUDY MARQUES,
AMY KELLEY,
DEBORAH PAYNE,
JAMES WIENCEK,
SUSAN PROSE,
ANDRE MATEVOUSIAN,
JAMES FOX,
PAUL KLEIN,
CHRISTOPHER SYNSVOLL,
C. PORCO,
J. OSLAND,
M. WYCHE,
L. ROBINSON,
D. HUMPHRIES,
S. HANSEN, and
FEDERAL BUREAU OF PRISONS,

Defendants.

ORDER TO DISMISS IN PART AND TO DRAW CASE

This matter is before the Court on the Recommendation to Dismiss in Part and to Draw Case entered May 1, 2019 (ECF No. 8). Plaintiff filed timely objections (ECF No. 9) and "additional" objections (ECF No. 10). The Court has reviewed the Recommendation *de novo* in light of the file and record in this case. On *de novo* review the Court concludes that the Recommendation is correct.

"[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court." *U.S. v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996).

In the objections, Plaintiff argues that issue preclusion is improper because the judgment in *Hale v. Fed. Bureau of Prisons*, No. 14-cv-00245-MSK-MJW, 2018 WL 1535508, at *1 (D. Colo. Mar. 28, 2018), *aff'd* 759 F. App'x 741, 2019 WL 117616 (10th Cir. Jan. 7, 2019) is not yet final. (ECF No. 9 at 2-4). Plaintiff plans to petition the U.S. Supreme Court for a writ of certiorari. (*Id.*).

Contrary to Plaintiff's argument, "[t]he appealability of a judgment, however, does not hinder its preclusive effect." *MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 832 (10th Cir. 2005) (citation omitted); *see also* 18A Fed. Prac. & Proc. Juris. § 4433 (3d ed.) ("a final judgment retains all of its res judicata consequences pending decision of the appeal"). Thus, as set forth in the Recommendation, the U.S. Court of Appeals for the Tenth Circuit's determinations in *Hale v. Fed. Bureau of Prisons*, 759 F. App'x 741, 2019 WL 117616 (10th Cir. Jan. 7, 2019) are binding in this action.

Plaintiff also argues that the defamation claim should not be dismissed because "no court has ruled as to the truth of the warden's specific statement." (ECF No. 9 at 4). In the complaint, Plaintiff alleges that Defendant Matevousian defamed him by stating in a letter to a United States Senator that "Creativity 'advocates for violence motivated by racial discrimination,' meaning to imply that Hale does likewise since he is an adherent of that religion." (ECF No. 1 at 26). In Colorado, a plaintiff must "show the falsity of a defamatory statement by 'clear and convincing evidence.'" *Bustos v. A & E Television Networks*, 646 F.3d 762, 764 (10th Cir. 2011) (citation omitted). The

Tenth Circuit determined "that Mr. Hale has sought to advance the white-supremacist goals of Creativity in ways that pose a danger both inside and outside of ADX." 759 F. App'x at 750. Thus, the Magistrate Judge correctly explained in the Recommendation that "Defendant Matevousian's allegedly defamatory statement is not defamatory because, in light of the Tenth Circuit's findings, Plaintiff cannot show it is false." (ECF No. 8 at 10).

In the "additional" objections, Plaintiff contends that Claims 2, 13, and 19 "have nothing whatever to do with Creativity" and, thus, are not barred by issue preclusion. (ECF No. 10 at 1). The Court disagrees.

As recounted by the Tenth Circuit, "[t]he overriding mission of the Church and the Creativity religion is the permanent prevention of the cultural, genetic, and biological genocide of the White Race worldwide and thus the achievement of White racial immortality." 759 F. App'x at 743. "By limiting Mr. Hale's ability to send and receive mail communicating Creativity's message, the BOP mitigates internal and external safety risks." *Id.* at 750-51.

Claim 2 alleges a violation of the freedom of speech due to "censorship" of Plaintiff's "philosophy" book, "The Triumph of Life: An Assault upon the Values of the Current World"; Claim 13 alleges a violation of the freedom of speech due to the refusal to mail to Plaintiff's mother an article he wrote about "those who care about the future of their White Race"; and Claim 19 alleges a violation of the freedom of speech based on withholding mail that mentions the title of books authored by Plaintiff, including "Ending White Slavery" and "The Racial Loyalist Manifesto." (*See* ECF No. 1). The Court agrees with the Magistrate Judge that these freedom of speech claims rely on

allegations that the speech at issue is based on Creativity and Plaintiff's related "philosophy." The Tenth Circuit decided this speech correctly is subject to the BOP's restrictions. Thus, these claims are barred by issue preclusion.

Accordingly, for the foregoing reasons, it is

ORDERED that the objections (ECF Nos. 9, 10) are overruled. It is

FURTHER ORDERED that the Recommendation to Dismiss in Part and to Draw Case (ECF No. 8) is accepted and adopted. It is

FURTHER ORDERED that Claims 2, 3, 4, 5, 6, 7, 8, 13, 16, 17, 18, and 19 are DISMISSED WITH PREJUDICE on the basis of issue preclusion. It is

FURTHER ORDERED that Claims 9 and 14 are DISMISSED WITHOUT PREJUDICE for failure to comply with Fed. R. Civ. P. 8(a). It is

FURTHER ORDERED that Claim 22 is DISMISSED WITH PREJUDICE as legally frivolous. It is

FURTHER ORDERED that Claims 1, 10, 11, 12, 15, 20, and 21 are drawn to Senior Judge Marcia S. Krieger. *See* D.C.COLO.LCivR 8.1(c), 40.1(d)(1); *Hale v. Federal Bureau of Prisons, et al.*, Case No. 14-cv-00245-MSK-MJW (final judgment entered March 29, 2018).

DATED at Denver, Colorado, this 5th day of June, 2019.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court