

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DAVID BOY FULLER,  
#147862,

Plaintiff,

v.

LT. NEARER, et al.,

Defendants.

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CIVIL ACTION NO. 2:13-CV-417-WHA

**ORDER**

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #60) and the Plaintiff's Objections thereto (Doc. #69).<sup>1</sup>

Following an independent evaluation and *de novo* review of the file in this case, the court finds the Objection to be without merit.

Plaintiff argues that the Magistrate Judge treated this case as if it was a "malpractice negligence suit rather than judging the propriety of the plaintiff's claims in light of the duty imposed by the laws of the United States" Doc. 69 at 10. Contrary to Plaintiff's assertion, the Magistrate Judge cited *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976) for the proposition that mere negligence in providing medical care is insufficient to violate the Constitution, and also cited *Waldrop v. Evans*, 871 F.2d 1030, 1033 (11th Cir. 1989) (mere medical malpractice does not constitute deliberate indifference). See Doc. 60 at 5, 9.

To the extent Plaintiff's objections do no more than re-argue the merits of his case, these allegations were addressed in the Recommendation, and with which this court agrees. To the extent the objections assert additional arguments, new theories of liability, and/or new allegations, such

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<sup>1</sup> This document is styled as a Complaint, but it is treated as an objection to the outstanding Recommendation.

