

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

CHRISTOPHER SHAWN DAVIS,)
)
Plaintiff,)
)
v.)
)
CITY OF BIRMINGHAM, BPD, et al.,)
)
Defendants.)

Case No. 2:17-cv-00164-LSC-TMP

ORDER

The magistrate judge entered a report on August 28, 2017, recommending all claims for injunctive and declaratory relief be dismissed as moot. (Doc. 7 at 26). The magistrate judge further recommended that all claims against all defendants be dismissed with prejudice except the plaintiff's:

1. Fourteenth Amendment claim against defendant Tammy for deliberate indifference to his serious medical needs on December 19, 2016;
2. Fourteenth Amendment claims against defendants Tammy, Cathy, Stephanie and Nunn, and defendants Harper, Shelby, Dial and Nixon in their individual capacities for deliberate indifference to his serious medical needs from December 20, 2016, to January 3, 2017;
3. Fourteenth Amendment claims against defendants Harper, Shelby, Dial and Nixon in their individual capacities for unconstitutional conditions of

confinement based on their refusal to provide him with a clean uniform, linens, washcloths and towels from December 20, 2016, to January 3, 2017; and

4. Fourteenth Amendment claims against defendants Tammy, Cathy, Stephanie and Nunn for deliberate indifference to his serious post-surgical needs from January 4 to January 15, 2017.¹

Although the magistrate judge advised the plaintiff of his right to file specific written objections within fourteen (14) days, no objections have been received by the court.

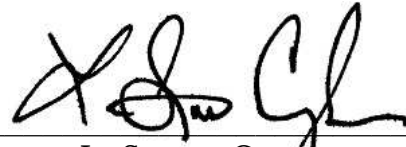
Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the magistrate judge's report is hereby **ADOPTED** and the recommendation is **ACCEPTED** in all aspects with the exception of the manner in which some of the plaintiff's claims are dismissed. The recommended dismissal of certain claims with prejudice is **REJECTED** because the claims are due to be dismissed without prejudice.

Therefore, the court **ORDERS** that the plaintiff's request for injunctive and declaratory relief is **MOOT**. The court **FURTHER ORDERS** that with the exception of the claims described in numbers 1 through 4 above, all claims against all defendants are **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C.

¹ The court recognizes this list does not mirror the recommendation section of the magistrate judge's report. (Doc. 7 at 26-28 ("Section V")). Nonetheless, the list accurately describes the recommendations made in analysis section. (*Id.* at 8-26 ("Section IV")).

§ 1915A(b) for failure to state a claim upon which relief can be granted. Claims 1 through 4 are **REFERRED** to the magistrate judge for further proceedings.

DONE AND ORDERED ON OCTOBER 25, 2017.

A handwritten signature in black ink, appearing to read 'L. Scott Coggler', written over a horizontal line.

L. SCOTT COGGLER
UNITED STATES DISTRICT JUDGE

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