

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**STEVE DUNCAN
ADC #103550**

PLAINTIFF

v.

Case No. 1:18-cv-00083-KGB-JTK

DR. DAVID FORT

DEFENDANT

ORDER

Before the Court are the Findings and Recommendations submitted by United States Magistrate Judge Jerome T. Kearney (Dkt. No. 51). Plaintiff Steve Duncan filed an objection to the Findings and Recommendations (Dkt. No. 52). After careful review of the Findings and Recommendation, a *de novo* review of the record, and a review of the objections, the Court adopts the Findings and Recommendations as its findings in all respects (Dkt. No. 51).

Mr. Duncan filed a complaint pursuant to 42 U.S.C. § 1983 on October 29, 2018, alleging that defendants Correctional Care Solutions, Rory Griffin, Dr. David Fort, Sheila Armstrong, and Billy Cowell failed to provide adequate medical care and treatment related to Mr. Duncan's diagnosis of Hepatitis C, resulting in the deterioration of his liver function and a decrease in his quality of life (Dkt. No. 2). On November 1, 2018, Judge Kearney granted Mr. Duncan's motion to proceed *in forma pauperis* and directed that he submit an amended complaint within 30 days (Dkt. No. 4). Mr. Duncan then filed an amended complaint on December 26, 2018, naming only Dr. David Fort as the sole defendant (Dkt. No. 7). Despite his improved liver function since the filing of the original complaint, Mr. Duncan states in the amended complaint that he is seeking damages for the two years of alleged suffering he underwent due to the failure of Dr. Fort to provide a requested medication to treat Mr. Duncan's Hepatitis C (*Id.*). On May 15, 2019, this Court dismissed without prejudice all of Mr. Duncan's claims against defendants Correctional

Care Solutions, Rory Griffin, Sheila Armstrong, and Billy Cowell for failure to state a claim (Dkt. No. 26).

The remaining defendant, Dr. Fort, then moved for summary judgment on Mr. Duncan's remaining claims (Dkt. Nos. 46-48). Mr. Duncan filed a response to Dr. Fort's motion for summary judgment (Dkt. No. 50). In the Proposed Findings and Recommendations, Judge Kearney recommends granting Dr. Fort's motion for summary judgment and dismissing with prejudice Mr. Duncan's amended complaint (Dkt. No. 51).

In his objections, Mr. Duncan argues that the Court should not adopt the Proposed Findings and Recommendations (Dkt. No. 52). Mr. Duncan claims that Dr. Fort was never questioned during the events leading up to the Proposed Findings and Recommendations (*Id.*). Mr. Duncan further alleges that, although defendants told the Court that a liver biopsy was performed on Mr. Duncan, it was not (*Id.*). Finally, Mr. Duncan asserts that he was never started on the requested medication, even after being told by defendants that he would be (*Id.*). For these reasons, Mr. Duncan argues that the Court should reject the recommendation and deny summary judgment as to the claim against Dr. Fort (*Id.*).

This Court has reviewed Mr. Duncan's objections and agrees with Judge Kearney that Mr. Duncan has failed to provide any record evidence that Dr. Fort's actions were deliberate and indifferent to Mr. Duncan's serious medical needs or that Mr. Duncan's health deteriorated because of Dr. Fort's decision not to prescribe him the requested medication (Dkt. No. 51). As stated by Judge Kearney, a mere disagreement with a treatment decision does not rise to the level of a constitutional violation (*Id.*). Therefore, this Court agrees with Judge Kearney that Mr. Duncan has failed to support an Eighth Amendment claim for relief (*Id.*).

It is therefore ordered that:

1. The Court adopts the Findings and Recommendations as its findings in all respects (Dkt. No. 51);

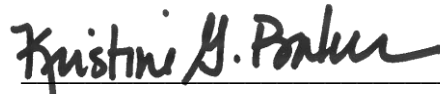
2. Dr. Fort's motion for summary judgment is granted (Dkt. No. 46);

3. Mr. Duncan's claims against Dr. Fort are dismissed with prejudice (Dkt. No. 7);

and

4. The Court certifies that, pursuant to 28 U.S.C. § 1915(a)(3), an *in forma pauperis* appeal from this Order would not be taken in good faith.

So ordered this 11th day of February, 2020.



Kristine G. Baker
United States District Judge