

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

JOE LEONARD BELL, JR.  
ADC #107834

PLAINTIFF

v.

2:13-cv-54-DPM-JTR

DANNY BURL, Warden, East Arkansas  
Regional Unit, ADC and JEREMY ANDREWS,  
Major, East Arkansas Regional Unit, ADC

DEFENDANTS

ORDER

1. No one has objected to most of Magistrate Judge Ray's recommendation. *No 67*. The Court sees no error of law or clear error of fact in the unobjected parts. FED. R. CIV. P. 72(b) (1983 addition to advisory committee notes).


2. Andrews does object to having a trial on Bell's retaliatory job assignment claim. After reviewing those issues *de novo*, the Court overrules the objection. FED. R. CIV. P. 72(b)(3). This murky record presents disputed factual issues on causation and Andrews's motivation. *Spencer v. Jackson County Missouri*, 738 F.3d 907, 911-13 (8th Cir. 2013). Andrews, moreover, is not entitled to qualified immunity at this point. He acknowledges Bell's

clearly established right to file grievances about his shoes, feet, and work, without any collateral consequences in Bell's job assignment. And if the fact finder resolved the disputed material facts in Bell's favor, then a reasonable officer would have known in the circumstances presented not to act as Andrews did. *Spencer*, 738 F.3d at 913-14. I adopt Judge Ray's careful and thoughtful Order in full.

3. Motion for summary judgment, *No. 49*, granted in part and denied in part. All Bell's claims against Burl are dismissed without prejudice based on no exhaustion. Bell's retaliatory-discipline and inadequate-care claims against Andrews are dismissed with prejudice. Bell's retaliatory-assignment claim remains for trial.

4. A Scheduling Order will issue setting trial for 13 July 2015. All deadlines, except for pre-trial filings, have passed. Judge Ray should appoint counsel to try the case.

So Ordered.

  
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D.P. Marshall Jr.  
United States District Judge

22 September 2014