

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

SHAWN YIELDING,
ADC #118018

PLAINTIFF

v.

5:11-cv-00261-SWW-JJV

CORRECTIONAL MEDICAL
SERVICES; *et al.*

DEFENDANTS

ORDER

The Court has reviewed the Proposed Findings and Recommended Partial Disposition submitted by United States Magistrate Judge Joe J. Volpe, recommending dismissal of separate defendant Correctional Medical Services (“CMS”), and Plaintiff’s objections. The Court agrees with Judge Volpe’s determination that Plaintiff fails to state a claim against CMS in his original complaint. However, with his objections, Plaintiff seeks leave to amend and states: “Plaintiff made [CMS] well aware of Plaintiff’s serious medical needs and they have continuously shown Plaintiff deliberate indifference through their employees.” Docket entry #7, at 6. Plaintiff cannot maintain a claim against CMS based on the allegedly wrongful actions of CMS employees. *See Burke v. North Dakota Dept. of Corrs. & Rehab.*, 294 F.3d 1043, 1044 (8th Cir. 2002). A corporation, acting under color of state law, may be held liable under § 1983 action only for its own unconstitutional policies or practices. *Id.* Because Plaintiff makes clear that he seeks to hold CMS liable under a theory of *respondeat superior*, the proposed amendment would be futile. *See Knapp v. Hanson*, 183 F.3d 786, 790 (8th Cir. 1999)(providing that permission to file an amended complaint may be denied when the proposed amendment would be futile).

After carefully considering the objections and making a *de novo* review of pertinent portions

of the record, the Court concludes that the Proposed Findings and Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

IT IS, THEREFORE, ORDERED that:

1. Defendant Correctional Medical Services is DISMISSED from this action for failure to state a claim upon which relief may be granted; and

2. Plaintiff's motion to amend (docket entry #7, at 6-7) is DENIED.

DATED this 21st day of October, 2011.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE