

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

JEREMY DALE REESE

PLAINTIFF

v.

Civil No. 07-5227

OFFICER REYES;
SHERIFF KEITH FERGUSON;
CAPT. HUNTER PETRAY;
CORPORAL THOMPSON

DEFENDANTS

O R D E R

Now on this 12th day of March, 2009, come on for consideration the following:

* **County Defendant's Motion For Summary Judgment** (document #37);

* **Report And Recommendation Of The Magistrate Judge** (document #51) ("R&R"); and

* plaintiff's **Motion To Amend Complaint** (document #52), which appears to be, and has been deemed, objections to the R&R, and the Court, being well and sufficiently advised, finds and orders as follows:

1. Plaintiff makes three claims relating to the conditions of his confinement at the Benton County Detention Center ("BCDC"), as against all defendants in both their official and individual capacities:

- * that he was subjected to the use of excessive force;
- * that he was denied medical care; and
- * that he was denied access to the courts.

Defendants moved for summary judgment as to all counts. The

Magistrate Judge assisted plaintiff with the presentation of his side of the case by use of a questionnaire. An R&R issued, objection has been made thereto, and the matter is ripe for decision.

2. The Magistrate Judge reported that plaintiff had alleged no custom, policy, or procedure of Benton County, Arkansas, to support his official capacity claims against the defendants, and recommended that those claims be dismissed. There is no objection to this aspect of the R&R, and it will be adopted.

3. The Magistrate Judge reported that a genuine issue of material fact existed with regard to the excessive force claim, and recommended that summary judgment be denied as to that claim. Although plaintiff appears to have some objections to the R&R in this regard, the Court need not address them, as the Magistrate Judge's recommendation is favorable to plaintiff and the Court will adopt it.

4. With regard to the denial of medical care claim, the Magistrate Judge reported that plaintiff was not denied medical care, but rather he disagreed with the type care that he was given. The Magistrate Judge also reported that there was no evidence any named defendant provided medical care to plaintiff. As a result, he recommended that summary judgment be granted as to this claim. Plaintiff does not object, and the R&R will be adopted as to this claim.

5. Finally, the Magistrate Judge reported that the nature

of plaintiff's denial of access claim was his contention that he was unable to file a motion contesting defendant Reyes' right to an attorney provided at the expense of Benton County. The Magistrate Judge recommended dismissal of this claim, as there was no prejudice to plaintiff in the representation provided to Reyes and the claim was frivolous.

In his objections, plaintiff questions why taxpayers are paying for the defense of a person no longer employed by BCDC. He offers no legal support for the proposition that this claim is personal to him, however, and this objection will be overruled. The R&R will be adopted as to this claim.

IT IS THEREFORE ORDERED that the the **Report And Recommendation Of The Magistrate Judge** (document #51) is **adopted in toto**, and plaintiff's **Motion To Amend Complaint** (document #52), being deemed objections to the R&R, is **overruled**.

IT IS FURTHER ORDERED that **County Defendant's Motion For Summary Judgment** (document #37) is **granted in part and denied in part**. The motion is **denied** as to plaintiff's claim of excessive force against defendants Reyes and Thompson in their individual capacities, and **granted in all other respects**.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE