

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

CARL JEFFREY PARKS

PLAINTIFF

v.

Civil No. 11-5006

SHERIFF KEITH FERGUSON;
JAIL ADMINISTRATOR ROBERT HOLLY;
JAIL DOCTOR JOHN HUSKINS;
DEPUTY STETTINISCH;
NURSE SMITH; and NURSE HARTGRAVES

DEFENDANTS

O R D E R

Now on this 6th day of February, 2012, comes on for consideration the **Report and Recommendation of the Magistrate Judge** (Doc. 52), to which no objections have been filed. The Court, being well and sufficiently advised, finds and orders as follows:

1. Plaintiff is proceeding in this case *pro se* and *in forma pauperis*.

2. The Magistrate Judge held a pre-trial evidentiary hearing on September 28, 2011, at which time she heard testimony from the plaintiff and the defendants, as well as others. The Eighth Circuit has approved the use of a pre-trial evidentiary hearing to determine whether a *pro se* inmate's § 1983 claim warrants a jury trial. See *Johnson v. Bi-State Justice Ctr./Ark. Dep't Corrections*, 12 F.3d 133, 135-36 (8th Cir. 1993) (internal citations omitted).

3. After the hearing, the defendants filed a post-hearing **Motion for Qualified Immunity** (Doc. 50). Plaintiff did not respond to the motion.

4. On January 9, 2012, the Magistrate Judge filed her Report and Recommendation in which she found that defendants were entitled to qualified immunity; that there is no basis for liability on the official capacity claims; and that the evidence did not present a sufficient disagreement to require submission to a jury. Therefore, the Magistrate Judge recommends that this case be dismissed in its entirety.

5. The Court has reviewed the Report and Recommendation and finds that it is sound in all respects and should be adopted *in toto*.

IT IS THEREFORE ORDERED that the **Report and Recommendation of the Magistrate Judge** (Doc. 52) is hereby **adopted in toto**.

IT IS FURTHER ORDERED that, for the reasons stated in the **Report and Recommendation of the Magistrate Judge** (Doc. 52), defendant's **Motion for Qualified Immunity** (Doc. 50) is **GRANTED**.

IT IS FURTHER ORDERED that the Court adopts the Magistrate Judge's finding that the evidence in this case does not present a sufficient disagreement to require submission to a jury. Therefore, plaintiff's complaint is hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

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