

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

BILL McCHRISTIAN

PLAINTIFF

v.

Civil No. 11-5125

**SHERIFF KEITH FERGUSON;
DR. HUSKINS; and DEPUTY CHAMBERS**

DEFENDANTS

O R D E R

Now on this 7th day of March, 2013, come on for consideration the following:

- * defendants' **Motion For Summary Judgment** (document #38);
- * **Report And Recommendation Of The Magistrate Judge** ("R&R") (document #46),
- * plaintiff's **Objections** (document #47); and
- * plaintiff's **Motion For Appointment Of Counsel** (document #48),

and the Court, having carefully reviewed said documents, finds and orders as follows:

1. Plaintiff Bill McChristian initially brought suit against the Benton County Sheriff (in his individual capacity only), alleging that he did not receive proper treatment for an infection in his hand, and for his high blood pressure, while he was incarcerated at the Benton County Detention Center.

McChristian later included two more defendants, Dr. Huskins and Deputy Chambers, and orally moved to amend his complaint to sue all defendants in their official capacity.

2. Magistrate Judge Erin L. Setser scheduled a pre-trial evidentiary hearing, and directed the defendants to move for summary judgment, procedures designed to focus the issues and determine if there is sufficient evidence to merit a trial.

At the conclusion of the evidentiary hearing, Judge Setser entered the R&R now under consideration. McChristian filed certain Objections, which included a request for appointment of counsel.

3. Judge Setser reported that McChristian failed to show that the defendants demonstrated deliberate indifference to his serious medical needs. She reported that McChristian was seen by Dr. Huskins frequently during incarceration, and that Dr. Huskins prescribed medications for McChristian's various ailments. While there were delays in receiving the medications on some occasions, Judge Setser found nothing that attributed these delays to Dr. Huskins. She noted that

Dr. Huskins ordered medication, tried different medications, saw McChristian multiple times, ordered his blood pressure monitored, and sent him to the hospital. In fact, McChristian himself testified that Dr. Huskins was a good doctor.

Judge Setser further found no evidence that Sheriff Ferguson made any decisions regarding McChristian's medical care, was aware of any need he had for medical care, or saw any of his grievances or medical requests. Moreover, she found no evidence of any policy, custom, or practice of Benton County upon which to base a

finding of municipal liability.

As for defendant Chambers, Judge Setser reported that during the evidentiary hearing McChristian testified that Chambers had done nothing wrong.

For the foregoing reasons, Judge Setser recommended dismissal of all McChristian's claims.

4. McChristian's Objections state that his blood pressure was taken "4 at the most 5 times within the year I was incarcerated." He contends that if he had had an attorney representing him, he could have proved this. He asks that an attorney be appointed for him, and states that he will hire an attorney himself "if need be."

5. McChristian's medical records during the time of his incarceration in Benton County dos not support his Objections. McChristian's medical charts (both at the jail and from several hospital visits) show blood pressure checks on the following dates:

04/04/11	122/77	(hospital)
04/08/11	140/90	(jail)
04/19/11	128/90	(jail)
04/24/11	157/92	(hospital)
" "	144/84	(hospital)
" "	205/123	(hospital)
" "	160/115	(hospital)
04/26/11	146/90	(jail)
05/03/11	156/90	
05/06/11	(actual pressures not recorded)	
05/10/11	" "	
05/17/11	160/100	
05/2?/11	170/120	(date partially illegible)
05/30/11	140/88	

06/09/11 186/98
06/22/11 150/98
06/24/11 120/70
06/28/11 126/80
06/??/11 140/92 (day omitted, but probably 06/30/11)
06/30/11 122/82 (at hospital)
" " 115/60 (at hospital)
07/20/11 180/100
07/21/11 140/86
07/25/11 (pressure reading illegible)
12/02/02 160/95

Moreover, while blood pressure checks dropped off after July, 2011, McChristian's medical requests submitted to his jailers after that date had mainly to do with his back pain. He included the words "blood pressure" at the top of many (in a blank space where the "nature" of the request is to be indicated), but actually mentioned concerns with blood pressure in the body of very few.

The Court has reviewed these medical requests, and they will not support a finding of deliberate indifference to a problem with high blood pressure. The reasonable inference to be drawn from them is that while McChristian continued to worry almost constantly about his blood pressure, he had very few physical symptoms that he attributed to it.

6. In light of the evidence countering McChristian's Objections, it does not appear that even if he now had the services of an attorney, McChristian could prove deliberate indifference to serious medical needs. The Court finds, therefore, that his Objections should be overruled, his Motion For

Appointment Of Counsel denied, the R&R adopted, summary judgment granted, and the case dismissed.

IT IS THEREFORE ORDERED that the **Report And Recommendation Of The Magistrate Judge** (document #46) is **adopted**.

IT IS FURTHER ORDERED that plaintiff's **Objections** (document #47) are **overruled**.

IT IS FURTHER ORDERED that plaintiff's **Motion For Appointment Of Counsel** (document #48) is **denied**.

IT IS FURTHER ORDERED that defendants' **Motion For Summary Judgment** (document #38) is **granted**, and plaintiff's claims are **dismissed with prejudice**.

IT IS SO ORDERED.

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