

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

COBY TOWNSEND HURST

PLAINTIFF

V.

CASE NO. 5:21-CV-5029

**DR. MARK RUCKER,
MERCY HOSPITAL NORTHWEST ARKANSAS;
NURSE DANIEL BURSON,
MERCY HOSPITAL NORTHWEST ARKANSAS; and
MERCY HOSPITAL ROGERS,
D/B/A MERCY HOSPITAL NORTHWEST ARKANSAS**

DEFENDANTS

OPINION AND ORDER

Before the Court is the Report and Recommendation (“R&R”) (Doc. 31) of the Honorable Christy Comstock, United States Magistrate Judge for the Western District of Arkansas, filed in this case on March 24, 2022. The R&R recommends granting Defendants’ Motions for Summary Judgment (Docs. 20 & 24). Plaintiff Coby Townsend Hurst filed an Objection (Doc. 34) to the R&R and a Motion for Leave to File Amended Complaint (Doc. 33).

As the R&R correctly states, “private conduct, no matter how egregious, discriminatory, or harmful, is beyond the reach of § 1983.” *Wickersham v. City of Columbia*, 481 F.3d 591, 597 (8th Cir. 2007). Mr. Hurst’s Complaint alleges that his constitutional rights were violated when hospital personnel attempted to provide him medical care. His Objection to the R&R fails to engage with the Magistrate Judge’s factual findings or legal reasoning, including the conclusion that Defendants were not acting

under color of state law when they treated Mr. Hurst. The Objection does nothing more than restate the facts in the Complaint and is therefore **OVERRULED**.

Next, Mr. Hurst's request to file an amended complaint is untimely and is denied on that basis. See Doc. 17, Initial Scheduling Order ("Motions to amend pleadings or to join other parties must be filed no later than November 15, 2021. **Motions not timely filed may be denied solely for that reason.**") (emphasis in original). The Motion fails to acknowledge that the deadline to amend pleadings has passed. Moreover, the proposed amendment would only recharacterize Defendants' actions as "medical battery" rather than "rape." See Doc. 34, p. 1. Such an amendment, even if it had been timely submitted, would have been futile because no § 1983 liability attaches to Defendants' actions.

IT IS THEREFORE ORDERED that the Motion for Leave to File Amended Complaint (Doc. 33) is **DENIED**.

IT IS FURTHER ORDERED that the R&R (Doc. 31) is **ADOPTED IN ITS ENTIRETY**. Defendants' Motions for Summary Judgment (Docs. 20 & 24) are **GRANTED**, and this case is **DISMISSED WITH PREJUDICE** with judgment to enter accordingly.

IT IS SO ORDERED on this 29th day of April, 2022.

/s/ Timothy L. Brooks
TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE