

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

ROBERT JEFFREY BRADY

PLAINTIFFS

VS.

CASE NO. 14-CV-6146

CORRECTIONAL OFFICER DEMPSEY

DEFENDANT

ORDER

Before the Court is the Report and Recommendation filed on January 5, 2016 by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 54). Judge Bryant recommends that Defendant's Motion for Summary Judgment (ECF No. 34) be granted in part and denied in part. Defendant has filed objections to the Report and Recommendation. (ECF No. 55). After reviewing the record *de novo*, the Court adopts Judge Bryant's Report and Recommendation as its own.

This civil rights action was filed by Plaintiff pursuant to the provisions of 42 U.S.C. § 1983. In his Amended Complaint, Plaintiff alleges that Defendant violated his constitutional rights by failing to protect him from assault by another inmate, Harry Hamm, who Defendant knew to be dangerous. In violation of Arkansas Department of Correction policy, Defendant left Hamm unattended with Plaintiff, thereby giving Hamm the opportunity to assault Plaintiff. Plaintiff alleges both official and individual capacity claims. Judge Bryant recommends that summary judgment be granted in favor of Defendant as to Plaintiff's official capacity claims. Judge Bryant recommends that Defendant's summary judgment motion be denied as to Plaintiff's individual capacity claims.

Defendant objects to Judge Bryant's recommendation regarding the individual capacity claims. Defendant essentially raises the same arguments made in its Motion for Summary Judgment. Defendant maintains that Plaintiff has failed to submit evidence showing that Defendant was deliberately indifferent to a substantial risk of harm to Plaintiff, as required to sustain a failure to protect claim. *See Young v. Selk*, 508 F.3d 868, 873 (8th Cir. 2007).

Upon review of the evidence, Judge Bryant found that there were disputed material questions of fact remaining as to Defendant's knowledge of the risk to Plaintiff's health and safety. Specifically, Judge Bryant relied on Plaintiff's testimony that there was a yellow sign on Hamm's cell door, indicating that he had a "punitive" classification which requires more protective handling by officers when they are escorting an inmate. Plaintiff also testified that Hamm had a well-known reputation for violence in the unit.

Upon review of the Report and Recommendations and Defendant's objections, the Court finds that Plaintiff has submitted sufficient evidence of Defendant's knowledge of the risk of harm to Plaintiff to withstand summary judgment. Accordingly, the Court overrules Defendant's objections and adopts Judge Bryant's Report and Recommendation. (ECF No. 54). For the reasons stated herein and above, as well as those contained in the Report and Recommendation, Defendant's Motion for Summary Judgment (ECF No. 34) is hereby **GRANTED in part** and **DENIED in part**. The motion is granted as to Plaintiff's official capacity claims against Defendant. The motion is denied as to Plaintiff's individual capacity claims.

IT IS SO ORDERED, this 24th day of March, 2016.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge