

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Wiley Y. Daniel

Civil Action No. 07-cv-01839-WYD-KLM

MIKEAL GLENN STINE and

Plaintiffs,

v.

HARLEY LAPPIN, Director B.O.P.;
MICHAEL NALLEY, Regional Director B.O.P.; and
RON WILEY, Warden ADX Supermax,

Defendants.

ORDER

THIS MATTER is before the Court in connection with Defendants' Motion to Dismiss Plaintiff Stine's Claims (docket #163), filed July 15, 2008. This motion was referred to Magistrate Judge Mix for a recommendation by Order of Reference dated March 7, 2008. A Recommendation of United States Magistrate Judge was issued on October 21, 2008, and is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Magistrate Judge Mix recommends therein that Defendants' motion to dismiss be granted in part and denied in part. Specifically, she recommends that (1) all claims should be dismissed against Defendants Lappin and Nalley in their individual capacities (2) Claim two should be dismissed; and (3) Claim one should survive to the extent that it asserts a claim for injunctive or nonmonetary relief against Defendants in their official

capacities and a claim for monetary relief against Defendant Wiley in his individual capacity. Magistrate Judge Mix advised the parties that specific written objections were due within ten (10) days after being served with a copy of the Recommendation. Recommendation at 25. Despite this advisement, no objections were filed by any party to the Magistrate Judge's Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation "under any standard [I] deem[] appropriate." Summers v. Utah, 927 F.2d 1165, 1167 (10th Cir. 1991); see also Thomas v. Arn, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Nonetheless, though not required to do so, I review the Recommendation to "satisfy [my]self that there is no clear error on the face of the record."¹ See Fed. R. Civ. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I agree with Magistrate Judge Mix that Plaintiff's requests for injunctive relief against Defendants is not barred by the doctrine of sovereign immunity. I further agree that the motion to dismiss must be denied as to the Fifth Amendment claim at this stage of the proceeding. Finally, I agree with Magistrate Judge Mix that Plaintiff's claims against Defendants Lappin and Nalley in their individual capacities must be dismissed in addition to Claim II of Plaintiff's Complaint. Accordingly, it is

¹ Note, this standard of review is something less than a "clearly erroneous or contrary to law" standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a de novo review, Fed. R. Civ. P. 72(b).

hereby

ORDERED that the Recommendation of United States Magistrate Judge dated October 21, 2008, is **AFFIRMED and ADOPTED**. It is

FURTHER ORDERED that Defendants' Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART**. It is

FURTHER ORDERED that all claims against Defendants Lappin and Nailey in their individual capacities are **DISMISSED**. It is

FURTHER ORDERED that Claim II is **DISMISSED**. It is

FURTHER ORDERED that Defendants' Motion is **DENIED** as to Claim I to the extent that Claim I asserts a claim for injunctive or nonmonetary relief against Defendants in their official capacities and a claim for monetary relief against Defendant Wiley in his individual capacity.

Dated: January 14, 2009

BY THE COURT:

s/ Wiley Y. Daniel _____
Wiley Y. Daniel
U. S. District Judge