

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

Civil Action No. 09-cv-00377-WYD-CBS

ELDEN KANZLER,

Plaintiff,

v.

DR. MCLAUGHLIN, and
DR. DEGROOTE,

Defendants.

**ORDER ADOPTING AND AFFIRMING
MAGISTRATE JUDGE'S RECOMMENDATION**

THIS MATTER is before the Court in connection with Defendant DeGroote's Motion to Dismiss Second Amended Complaint filed September 22, 2009 [#33]. This motion was referred to Magistrate Judge Shaffer for a recommendation by memorandum dated September 22, 2009 [#34]. A Recommendation of United States Magistrate Judge issued on April 14, 2010 [#38], and is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Magistrate Judge Shaffer recommends therein that Defendant's motion be granted, and that Defendant DeGroote be dismissed from this civil action based on Plaintiff's failure to state a claim upon which relief can be granted. Magistrate Judge Shaffer found that Plaintiff failed to plead sufficient facts to demonstrate that Defendant DeGroote had any personal participation in the alleged violation of Plaintiff's Eight

Amendment rights; that Plaintiff's allegations of a lack of medical treatment or improper medical treatment were insufficient to state a claim under the Eight Amendment; and that Defendant DeGroot is entitled to qualified immunity from Plaintiff's § 1983 claim. *Recommendation* at 5-13, 16. He further recommends that Defendant McLaughlin be dismissed from this civil action for failure to effect service within the time limit of Fed. R. Civ. P. 4(m) and pursuant to D.C. COLO. LCivR 41.1 for failure to prosecute. *Recommendation* at 14-16.

Magistrate Judge Shaffer advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation. *Recommendation* at 17. 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

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).

on the face of the record. I agree with Magistrate Judge Shaffer that Plaintiff's claims against Defendants DeGroot and McLaughlin should be dismissed. Accordingly, it is hereby

ORDERED that the Recommendation of United States Magistrate Judge dated April 14, 2010 [#38], is **AFFIRMED and ADOPTED**. In accordance therewith, it is

ORDERED that Defendant DeGroot's Motion to Dismiss Second Amended Complaint filed September 22, 2009 [#33] is **GRANTED**, and this action is **DISMISSED**.

Dated: May 13, 2010

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge