

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

Civil Action No. 09-cv-00654-WYD-KMT

ROBERT JAMES MERCER,

Plaintiff,

v.

ROBERT PETERSON, in his individual and official capacities and,
MICHAEL MOORE, in his individual and official capacities
WILLIAM FRANGIS,
ELBERT COUNTY SHERIFF'S DEPARTMENT, and
COUNTY OF ELBERT, COLORADO, in their official capacities

Defendants.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

THIS MATTER is before the Court on Defendants' Motion for Summary Judgment [ECF No. 83], filed December 8, 2010, and Defendants' Errata Regarding Motion for Summary Judgment [ECF No. 85], filed December 9, 2010. The motion was referred to Magistrate Judge Kathleen M. Tafoya for a Recommendation. Magistrate Judge Tafoya issued her Recommendation on April 6, 2011 [ECF No. 107], which is incorporated herein by reference. See 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), D.C.COLO.LCivR. 72.1.

Magistrate Judge Tafoya recommends that Defendants' Motion for Summary Judgment be granted in part and denied in part. Specifically, Magistrate Judge Tafoya recommends that Defendants' motion for summary judgment be denied with respect to

Plaintiff's First Claim for Relief against Defendants Robert Peterson and Michael Moore for use of excessive force, and that it be granted in all other respects, as to all remaining claims and defenses, and that Defendants Frangis and Elbert County be dismissed. She further recommends that the caption of this case be amended to delete Defendant Elbert County Sheriff's Department.

Pursuant to Fed. R. Civ. P. 72(b), Magistrate Judge Tafoya advised the parties that they had fourteen days to serve and file specific written objections to her Recommendation. No objections have been filed. Given that no objections have 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, 106 S.Ct. 466, 88 L.Ed.2d 435 (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"). 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

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Tafoya's Recommendation is thorough, well reasoned, and sound. I agree with Magistrate Judge Tafoya that the pending motion should be granted in part and denied in part for the reasons stated in

¹I note that 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).

both the Recommendation and this Order.

Accordingly, it is

ORDERED that the Recommendation of the United States Magistrate Judge Tafoya [ECF No. 107] is **AFFIRMED AND ADOPTED**.

In accordance therewith, it is

FURTHER ORDERED that Defendants' Motion for Summary Judgment [ECF No. 83] is **GRANTED** in part and **DENIED** in part. The motion is **DENIED** with respect to Plaintiff's First Claim for Relief for excessive force against Defendants Peterson and Moore. It is **GRANTED** in all other respects as to all other claims and defenses, and Defendants Frangis and Elbert County are **DISMISSED WITH PREJUDICE**. It is

FURTHER ORDERED that the caption of this case shall be amended to delete Defendant Elbert County Sheriff's Office because no surviving claims exist.

Dated: June 30, 2011

BY THE COURT:

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