

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

Civil Action No. 09-cv-00983-WYD-KLM

WELLMAN E. GIBSON,

Plaintiff,

v.

ANNA MARIE CAMPBELL,
C. HOLST, AIC,
SHIRLEY STEINBECK,
MARSHALL GRIFFITH,
LT. STEINBECK, and
DOCTOR ASSEN,

Defendants.

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

This matter is before the Court on Plaintiff's Request to Stop Retaliatory Move filed November 30, 2009. Plaintiff requests in the motion that the Court order the Colorado Department of Corrections ("CDOC") not to move him until issues associated with his disability and the "books on tape program" are resolved. This motion was referred to Magistrate Judge Mix. She issued a Recommendation of United States Magistrate Judge on January 21, 2010, finding that the motion be denied.

Magistrate Judge Mix advised the parties that they had "fourteen (14) days after service of the Recommendation to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned." (Recommendation at 4.) She also advised that "[a] party's objections to this Recommendation must be both timely and specific to preserve an issue for de novo

review by the District Court or for appellate review.” (*Id.*) Despite this advisement, no objections were filed to the 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. Magistrate Judge Mix construed the motion as a request for a preliminary injunction and found that Plaintiff had not established that he was facing immediate and irreparable harm. (Recommendation at 2-3.) Additionally, she considered the “well-established law that prison management functions should be left to the broad discretion of prison administrators to enable them to manage prisons safely and effectively.” (*Id.*) I find that the Recommendation is thorough and well reasoned and should be affirmed. Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge dated January 21, 2010, is **AFFIRMED and ADOPTED**. In accordance therewith, 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).

ORDERED that Plaintiff's Request to Stop Retaliatory Move (doc. # 60) is
DENIED.

Dated: February 17, 2010

BY THE COURT:

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