

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 09-cv-02662-CMA-MJW

JERRY LEWIS DEDRICK,

Plaintiff,

v.

J. M. WILNER, Warden,
B. GREENWOOD, AUSA,
B. CINK, P.A.,
MRS. REICHERT, P.A., and
L. MILUSNIC, A.W., et al.,

Defendants

**ORDER AFFIRMING AND ADOPTING JANUARY 6, 2011 RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

The above-entitled and numbered civil action was referred to United States Magistrate Judge Michael J. Watanabe pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Fed. R. Civ. P. 72(a) and (b). On January 6, 2011, the Magistrate Judge issued a Recommendation, recommending that the Court grant a Motion to Dismiss (Doc. # 77) filed by Defendants J.M. Wilner, B. Cink, Reichert, and Milusnic and a Motion for Summary Judgment (Doc. # 89) filed by Defendants B. Cink and Reichert. Neither motion was filed on behalf of Defendant B. Greenwood because he has not been served and has not waived proper service of the Complaint. The Magistrate Judge's Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Plaintiff, proceeding *pro se*, filed objections to the Recommendation, on January 12, 2011. (Doc. # 144.) Defendants responded to Plaintiff's objections on January 25, 2011 (Doc. #146), and Plaintiff replied in support of his objections on February 3, 2011 (Doc. # 148.)

Plaintiff merely asserts the same arguments that he presented in opposition to Defendants Motion to Dismiss and Motion for Summary Judgment, *i.e.*, he does not raise any new legal or factual issues in his objections. The Court has conducted a *de novo* review of this matter, including carefully reviewing all relevant pleadings, the Recommendation, Plaintiff's objections, and the parties' further briefing in connection with Plaintiff's objections. The Court agrees with Defendants that Plaintiff fails to raise any new issues of law or fact warranting a result different from that reached by the Magistrate Judge in his Recommendation. The Court finds Plaintiff's objections are without merit. The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby AFFIRMS and ADOPTS the Report of the United States Magistrate Judge as the findings and conclusions of this Court.

Having found that Plaintiff's claims fail to survive a motion to dismiss and/or fail as a matter of law, the Court also finds that dismissal of Plaintiff's claims against Defendant Greenwood is warranted, for failure to state an actionable claim. As with Plaintiff's claims against Defendants Wilner, Cink, Reichert, and Milusnic, the Court finds that Plaintiff has failed to allege facts showing Defendant Greenwood's personal

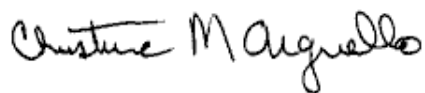
participation in any alleged constitutional violation and his deliberate indifference to a serious medical need.

Accordingly, IT IS ORDERED that:

- (1) The January 6, 2011 Recommendation of United States Magistrate Judge Michael J. Watanabe (Doc. #141) is AFFIRMED and ADOPTED;
- (2) Plaintiff's Objections to the Magistrate Judge's January 6, 2011 (Doc. ## 144, 148) are OVERRULED;
- (3) Defendants Wilner, Cink, Reichert, and Milusnic's Motion to Dismiss (Doc. # 77) is GRANTED;
- (4) Defendants Cink and Reichert's Motion for Summary Judgment (Doc. # 89) is GRANTED;
- (5) Plaintiff's claims against Defendants Wilner, Cink, Reichert, Milusnic, and Greenwood are DISMISSED WITHOUT PREJUDICE;
- (6) Plaintiff's claims against Defendants Cink and Reichert are DISMISSED WITH PREJUDICE; and
- (7) Plaintiff's Motion for Temporary Restraining Order (Doc. #149) is DENIED AS MOOT.

DATED: February 28, 2011

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge