

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

Civil Action No. 12-cv-02491-WYD-KMT

ROBIN E. DILGER,

Plaintiff,

v.

CASE MANAGER GLEN SCHAFFER, La Vista Correctional Facility,

Defendants.

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

THIS MATTER is before the Court in connection with Defendant Schaffer's Motion to Dismiss filed January 31, 2012. This motion was referred to Magistrate Judge Tafoya for a recommendation by Order of Reference of December 5, 2012, and Memorandum of January 31, 2013. A Recommendation of United States Magistrate Judge was issued on February 27, 2013, and is incorporated herein by reference.

By way of background, this action is brought under 42 U.S.C. § 1983 by a convicted felon who was previously incarcerated in the Colorado Department of Corrections ("CDOC"). She asserts that her rights under the Eighth Amendment and Thirteenth Amendment were violated. Defendant Schaffer is employed by CDOC as a Case Manager at the La Vista Correctional Facility. The other defendants to the case were dismissed by Order of November 29, 2012.

Magistrate Judge Tafoya recommends that Defendant Schaffer's Motion to Dismiss be granted, and that the case be dismissed in its entirety. (Recommendation at 11.) As grounds therefor, she finds that Plaintiff's official-capacity claims for monetary relief against Defendant are barred by the Eleventh Amendment and should be dismissed for lack of subject matter jurisdiction. (*Id.* at 6-7.) She further finds that Plaintiff has not stated claims for Thirteenth or Eighth Amendment violations, and that Defendant is entitled to qualified immunity. (*Id.* at 7-11.)

Magistrate Judge Tafoya advised the parties that specific written objections were due within fourteen (14) days after service of a copy of the Recommendation. (Recommendation at 12.) Despite this advisement, no objections were filed 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.

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).

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 well reasoned and that Defendant Schaffer's Motion to Dismiss should be granted for the reasons stated therein. Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge dated February 27, 2013 (ECF No. 20) is **AFFIRMED and ADOPTED**. In accordance therewith, it is

ORDERED that Defendant's Motion to Dismiss filed January 31, 2013 (ECF No. 18) is **GRANTED** and this case is **DISMISSED WITH PREJUDICE**. Finally, it is

ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this recommendation would not be taken in good faith and, therefore, *in forma pauperis* status is denied for the purpose of appeal.

Dated: March 21, 2013

BY THE COURT:

s/ Wiley Y. Daniel _____
Wiley Y. Daniel
Senior United States District Judge