

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00174-GPG

RICHARD "NIKKI" RODGERS,

Plaintiff,

v.

JODI SINKER, Nurse 3 of CTCF, Clinical Services,
ZUPAN, Warden CTCF, FNU, and
COLORADO DEPARTMENT OF CORRECTIONS,

Defendants.

ORDER TO DISMISS IN PART AND TO DRAW IN PART

Plaintiff Richard "Nikki" Rodgers is a prisoner in the custody of the Colorado Department of Corrections. Plaintiff currently is incarcerated at the Buena Vista Correctional Complex-Main & Boot Camp in Buena Vista, Colorado. Plaintiff has filed *pro se*, a Prisoner Complaint pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983, alleging that her rights under the United States Constitution have been violated.

The Court construes the Complaint liberally because Plaintiff is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court cannot act as an advocate for a *pro se* litigant. See *Hall*, 935 F.2d at 1110. For the reasons stated below, the action will be dismissed in part and drawn in part to a presiding judge and when applicable to a magistrate judge.

Overall, Plaintiff asserts she was diagnosed with Gender Dysphoria two years prior to her incarceration and was prescribed and took medication during this time, but

she was denied hormonal treatment once she was incarcerated. Plaintiff seeks injunctive relief and money damages.

Defendant Colorado Department of Corrections will be dismissed for the following reasons. Any claim against Defendant Colorado Department of Corrections is barred by the Eleventh Amendment. *See Will v. Michigan Dep ' t of State Police*, 491 U.S. 58, 66 (1989). "It is well established that absent an unmistakable waiver by the state of its Eleventh Amendment immunity, or an unmistakable abrogation of such immunity by Congress, the amendment provides absolute immunity from suit in federal courts for states and their agencies." *Ramirez v. Oklahoma Dep't of Mental Health*, 41 F.3d 584, 588 (10th Cir. 1994).

Although the Eleventh Amendment does not bar a federal court action so long as the plaintiff seeks in substance only prospective relief and not retrospective relief for alleged violations of federal law, Plaintiff must assert a claim for prospective relief against individual state officers. *Verizon Maryland v. Public Service Commission of Maryland*, 535 U.S. 635, 645 (2002) (quoting *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296 (1997)); *Hill v. Kemp*, 478 F.3d 1236 (10th Cir. 2007). Defendant, Zupan, therefore, is a properly named defendant for any prospective relief. Accordingly, it is

ORDERED that Defendant Colorado Department of Corrections is dismissed as an improper party to this action. It is

FURTHER ORDERED that the Complaint as asserted against remaining Defendants shall be drawn to a presiding judge and when applicable to a magistrate judge.

DATED at Denver, Colorado, this 6th day of March, 2015.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court