

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

ROBERT SAMUEL RIVERS, JR,

PLAINTIFF,

-vs-

Case No. 1:16-cv-00040-WTH-GRJ

JOSHUA DONAWAY, CAPTAIN BEVIS,
SERGEANT LAMBERT, VICKY JOHNSON,

DEFENDANTS.

ORDER

This matter is before the Court on the Report and Recommendation of the Magistrate Judge, ECF No. 55, recommending that the motion for summary judgment filed by defendant Vicky Johnson, ECF No. 39, and the motion for summary judgment filed by defendants Bevis, Donaway and Lambert, ECF No. 44, be granted. The parties were given an opportunity to object to the Report and Recommendation, but no objections have been filed. In fact, plaintiff has not participated in this case in any way since he was released from custody in August of 2016.

The Magistrate Judge correctly notes that, despite plaintiff's lack of participation, it is still appropriate for this Court to consider the motions for summary judgment. Under Fed. R. Civ. P. 56(e)(3), when "a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c)" the Court may "grant summary judgment if the motion and supporting materials –

including the facts considered undisputed – show that the movant is entitled to it.” Also, because plaintiff’s complaint was signed under penalty of perjury, ECF No. 7 at 15, this Court should treat the document as a sworn affidavit.

After so considering the record evidence, the Court agrees with the Magistrate Judge that plaintiff has failed to support his assertions of fact or to properly address the defendants’ assertions of fact. Also, the Court agrees that plaintiff has otherwise failed to prosecute his case and follow orders of the Court. Furthermore, the Court agrees with the Magistrate Judge that the sworn complaint, motions and supporting materials show that the defendants are entitled to the relief requested in their motions for summary judgment.

With regard to the claims against Sergeant Donaway, Captain Bevis and Sergeant Lambert, plaintiff seeks only compensatory, nominal and punitive damages under 42 U.S.C. § 1983; he does not seek injunctive or declaratory relief. Also, the claims against them all relate to disciplinary violation findings against plaintiff that plaintiff has not had overturned. Thus, a judgment in plaintiff’s favor would necessarily imply the invalidity of the disciplinary hearings and the resulting sanctions. The Supreme Court has held that such a claim is not cognizable under § 1983. *Edwards v. Balisok*, 520 U.S. 641, 648, 117 S. Ct. 1584, 1589, 137 L. Ed. 2d 906 (1997), *citing Heck v. Humphrey*, 512 U.S. 477, 487, 114 S.Ct. 2364, 2372–2373, 129 L.Ed.2d 383 (1994). With regard to Nurse Johnson, none of the grievances filed by plaintiff related to the medical care he received from her. Thus, plaintiff has not offered any evidence

to rebut defendant Johnson's evidence that he did not exhaust his administrative remedies with regard to his claims against her.

Accordingly, the Report and Recommendation of the Magistrate Judge is accepted and incorporated herein. The Clerk is directed to enter judgment stating as follows:

Summary Judgment is granted in favor defendant Johnson on all claims.
Summary Judgment is granted in favor of defendants Bevis, Lambert, and Donaway on all claims against each.

The Clerk is directed to close the file.

IT IS SO ORDERED.

DONE and ORDERED at Gainesville, Florida this 18th day of July, 2017.

A handwritten signature in blue ink, appearing to read "A. Penell Hodgson", is written above a horizontal line.

UNITED STATES DISTRICT JUDGE