

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

SOL HOKE,

Plaintiff,

v.

Case No.: 4:21cv128-MW/MAF

SHAVONNA WALKER, et al.,

Defendants.

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**ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION**

This Court has considered, without hearing, the Magistrate Judge's Report and Recommendation. ECF No. 126. The Magistrate Judge recommends that this Court grant the motion for partial summary judgment for a number of reasons, including by default. But this Court has an independent obligation to determine whether Defendant is entitled to summary judgment on the merits and “cannot base the entry of summary judgment on the mere fact that the motion was unopposed.” *United States v. One Piece of Real Prop. Located at 5800 SW 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1101 (11th Cir. 2004). Therefore, this Court has reviewed the motion for partial summary judgment and the evidence attached thereto, including Dr. Baluga’s affidavit.

Dr. Baluga attests, among other things, that Defendant Murphy was not a nurse or in her line of supervision, and that she never supervised Defendant Murphy.

See ECF No. 116-2 ¶¶ 12–13. In addition, Dr. Baluga attests that neither the hospital’s security system nor the surveillance camera staff were under her line of supervision. *Id.* ¶¶ 24–25. Dr. Baluga attests that she does not recall any incident involving Plaintiff or any complaints made by Plaintiff about sexual relations or being raped by staff while he was a resident at the hospital. *Id.* ¶ 9. Dr. Baluga asserts she is entitled to judgment as a matter of law with respect to Plaintiff’s failure to protect claim, because there is no genuine dispute of material fact as to whether she was subjectively aware of any incident involving Plaintiff while he was housed as a resident at the hospital. In response, Plaintiff concedes that he does not have any evidence to demonstrate that Dr. Baluga “personally knew that Ms. Murphy was sexually abusing him,” ECF No. 123 at 2. Accordingly, viewing the facts in the light most favorable to Plaintiff and construing all reasonable inferences drawn therefrom in his favor, Defendant Baluga is entitled to judgment as a matter of law with respect to the failure to protect claim. Accordingly, upon consideration, no objections having been filed by the parties,

IT IS ORDERED:

The report and recommendation, ECF No. 126, is **accepted and adopted** as this Court’s opinion, except for the recommendation that this Court should grant the motion for partial summary judgment by default. Plaintiff’s motion for voluntary dismissal of Defendant Baluga, ECF No. 123, is **DENIED**. Defendant Baluga’s

motion for partial summary judgment, ECF No. 116, is **GRANTED**. Plaintiff's claims against Defendant Baluga are **DISMISSED with prejudice**; however, this Court does *not* direct partial entry of judgment pursuant to Federal Rule of Civil Procedure 54(b). Plaintiff's claims against Defendant Walker remain pending. The Clerk shall set this matter for a telephonic status conference to discuss setting Plaintiff's remaining claims for trial.

SO ORDERED on November 13, 2023.

s/Mark E. Walker
Chief United States District Judge