COUCH v BRITTON Doc. 72

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA MACON DIVISION

GARY COUCH,	}
Plaintiff,)
v.) CIVIL ACTION NO. 5:15-CV-26 (MTT
Officer BRITTON,)
Defendant.))
	<u></u> ,

ORDER

United States Magistrate Judge Charles H. Weigle recommends denying the Defendant's motion for summary judgment (Doc. 61) because there is a genuine issue of fact whether the Defendant applied force maliciously and sadistically to cause harm and the Defendant is not entitled to qualified immunity. (Doc. 68). The Magistrate Judge also recommends denying the Plaintiff's "Motion Requesting to be Moved to Safe Living Conditions" (Doc. 66) and "Motion for Access and/or Assistance to Law Library" (Doc. 65). The Plaintiff has objected to the Recommendation. (Doc. 69). Pursuant to 28 U.S.C. § 636(b)(1), the Court has reviewed the Plaintiff's objection and has made a *de novo* determination of the portions of the Recommendation to which the Plaintiff objects.

It appears from the Plaintiff's objection that he seeks summary judgment in his favor against the Defendant. (Doc. 69 at 2). Indeed, the Plaintiff labeled his second response to the Defendant's motion for summary judgment as a "Notice of Summary Judgment Motion" in which he asked for "[f]inal [j]udgment" to be entered on his "claims without a trial." (Doc. 64 at 1). The Court construes this response as the Plaintiff's

motion for summary judgment. The Plaintiff objects to the Magistrate Judge not recommending the Court grant his motion for summary judgment.¹ The Magistrate Judge set the dispositive motion deadline for January 14, 2016 (Doc. 60), but the Plaintiff did not file his motion for summary judgment until February 8, 2016. Where a motion for summary judgment is filed after the district court's deadline for dispositive motions, the district court may properly deny it as untimely. *Dedge v. Kendrick*, 849 F.2d 1398, 1398 (11th Cir. 1988); *T.H.E. Ins. Co. v. Cochran Motor Speedway*, 2010 WL 5351183, at *2 (M.D. Ga.). Therefore, the Court denies the Plaintiff's motion for summary judgment (Doc. 64) as untimely.

The Court has reviewed the Recommendation, and the Court adopts the findings, conclusions, and recommendations of the Magistrate Judge. The Recommendation is **ADOPTED as modified** and made the Order of this Court. Accordingly, the Defendant's motion for summary judgment (Doc. 61) and the Plaintiff's motion for summary judgment (Doc. 64) are **DENIED**. The Plaintiff's "Motion Requesting to be Moved to Safe Living Conditions" (Doc. 66) and "Motion for Access and/or Assistance to Law Library" (Doc. 65) are **DENIED**.

SO ORDERED, this 23rd day of May, 2016.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

¹ The Plaintiff also emphasizes in his objection that his injuries were more than de minimis. (Doc. 69 at 1-2). This appears to be in response to the Defendant's argument that the Plaintiff may only recover nominal damages if he prevails. (Doc. 61-2 at 9). There is evidence that the Plaintiff may have suffered more than de minimis injuries. (Docs. 61-3 at 40:13-16, 54:4-10, 55:12-14, 58:8-10; 61-7 at 1-4; 61-11 at 2). Thus, the issues of liability and damages will be left to the jury.