

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

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|----------------------------|---|------------------------------------|
| CLYDE F. HOLLAND, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | No. 5:16-CV-331-CAR-MSH |
| | : | Proceedings Under 42 U.S.C. § 1983 |
| Warden GREGORY McLAUGHLIN, | : | |
| <i>et al.,</i> | : | |
| | : | |
| Defendants. | : | |
| _____ | : | |

**ORDER ON UNITED STATES MAGISTRATE JUDGE’S
ORDER AND RECOMMENDATION**

Before the Court is the United States Magistrate Judge’s Order and Recommendation to allow Plaintiff Clyde Holland’s claims against Defendants Dr. Robinson, Dr. Fye, and Warden Gregory McLaughlin to go forward; and dismiss without prejudice Plaintiff’s claims against the Georgia Department of Corrections, unknown medical and dental providers for Macon State Prison, Phoebe Sumter Medical Center (“Phoebe Sumter”), and Dr. Barbara Dalrymple pursuant to 28 U.S.C. § 1915A. Plaintiff has filed a Motion for Reconsideration [Doc. 14], which the Court construes as an Objection. Having fully considered the record in this case and investigated *de novo* those portions of the Order and Recommendation to which Plaintiff objects, the Court agrees with the findings and conclusions in the Order and Recommendation.

Accordingly, the Order and Recommendation [Doc. 9] is **HEREBY ADOPTED** and **MADE THE ORDER OF THIS COURT**.

In this *pro se* action pursuant to 42 U.S.C. § 1983, Plaintiff asserts Macon State Prison officials were deliberately indifferent to his serious medical needs, in violation of his Eighth Amendment rights. According to the Complaint, Plaintiff suffers from hypoglycemia, a pancreatic insulinoma, H. pylori bacteria in his stomach, prostate cancer, hepatitis C, arthritis, and severe dental problems. Despite Plaintiff's medical needs, he alleges prison officials refuse to provide treatment. Additionally, on March 3, 2016, Plaintiff hit his head on a metal box in his cell, breaking his skull. Prison officials transported Plaintiff to Phoebe Sumter for treatment. While walking in shackles in the Phoebe Sumter parking lot, Plaintiff fell in a hole, injuring his head, shoulder, hip, knee, and wrist. Plaintiff alleges Phoebe Sumter negligently maintained its parking lot and failed to treat the injuries he sustained in the fall.

Plaintiff only objects to the Magistrate Judge's Recommendation to dismiss his claim against Phoebe Sumter. As set forth in the Order and Recommendation, Plaintiff's claim against Phoebe Sumter fails for three reasons. First, Plaintiff fails to allege Phoebe Sumter's conduct was more than mere negligence, which is not actionable under § 1983.¹ Second, § 1983 does not create vicarious liability, and thus Phoebe

¹ [Doc. 9, p. 7].

Sumter cannot be held liable for the actions of its medical personnel.² Third, to the extent Plaintiff seeks to bring a negligence claim under state law against Phoebe Sumter, such claim does not arise from a common nucleus of operative fact with his surviving federal claims, and thus the Court lacks supplemental jurisdiction.³ In his Objection, Plaintiff contends the Court should not dismiss his claim because prison officials lied about his fall to protect Macon State Prison's contract with Phoebe Sumter.⁴ Plaintiff's argument, however, is irrelevant. Accordingly, Plaintiff's Objection is **OVERRULED**.

CONCLUSION

For the reasons set forth above, the Order and Recommendation [Doc. 9] is **HEREBY ADOPTED** and **MADE THE ORDER OF THIS COURT**. Accordingly, Plaintiff's claims against Defendants Dr. Robinson, Dr. Fye, and Warden Gregory McLaughlin may **go forward**; and Plaintiff's claims against the Georgia Department of Corrections, unknown medical and dental providers for Macon State Prison, Phoebe Sumter, and Dr. Barbara Dalrymple are **DISMISSED without prejudice**.

² *Id.*

³ *Id.* at p. 8. Indeed, Plaintiff represents he intends to file a negligence claim in state court. [Doc. 14, p. 3].

⁴ [Doc. 14, p. 2].

SO ORDERED, this 17th day of July, 2017.

S/ C. Ashley Royal

C. ASHLEY ROYAL, SENIOR JUDGE
UNITED STATES DISTRICT COURT