

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

**MICHAEL GRAGG and
TRACEY GRAGG,**)
)
)
Plaintiffs,)
)
v.)
)
SIU PHYSICIANS & SURGEONS,)
et al.,)
)
Defendants.)

No. 17-cv-3195

ORDER

SUE E. MYERSCOUGH, U.S. District Judge:

This matter comes before the Court on the Report and Recommendation of United States Magistrate Judge Tom Schanzle-Haskins (d/e 5). The Court ADOPTS the Report and Recommendation.

On September 14, 2017, Plaintiffs Michael Gragg and Tracey Gragg filed a pro se Complaint (d/e 1) against SIU Physicians & Surgeons, Quanada Women’s Shelter, Memorial Health Systems, and Central Illinois Kidney and Dialysis Center alleging medical malpractice. Plaintiffs also filed a Motion for Leave to Proceed in District Court Without Prepaying Fees or Costs (d/e 2).

Judge Schanzle-Haskins reviewed Plaintiffs' Complaint and Motion for Leave. Judge Schanzle-Haskins recommends that this Court deny the Motion for Leave to Proceed in District Court Without Prepaying Fees or Costs filed by Plaintiffs Michael Gragg and Tracey Gragg and dismiss the cause for failure to state a claim upon which relief may be granted.

Objections to the Report and Recommendation were due within 14 days of service of a copy of the Report and Recommendation. A copy of the Report and Recommendation was mailed to Plaintiffs on September 27, 2017.

When a party must act within a specified time after service is made by mail, three days are added to the time period. See Fed. R. Civ. P. 6(d); see also Fed. R. Civ. P. 5(b)(2)(C) (providing that a party is served by mailing the document to the person's last known address, in which case service is complete upon mailing).

Therefore, Plaintiffs' objections were due on or before October 16, 2017. Plaintiffs failed to file any objections.

Pursuant to Federal Rule of Civil Procedure 72(b)(3), the Court "may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with

instructions.” Fed. R. Civ. P. 72(b)(3). The Court reviews de novo any part of the Report and Recommendation to which a proper objection has been made. Fed. R. Civ. P. 72(b)(3). “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” Johnson v. Zema Sys. Corp., 170 F. 3d 734, 739 (7th Cir. 1999) (also noting that a party who fails to object to the report and recommendation waives appellate review of the factual and legal questions).

Judge Schanzle-Haskins found that Plaintiff’s Complaint failed to state a claim because (1) Plaintiffs cannot bring a 42 U.S.C. § 1983 claim against defendants who are not state actors; (2) even if SIU Physicians & Surgeons were considered a state actor, a medical malpractice claim does not state a constitutional claim under § 1983; and (3) the Court lacks subject matter jurisdiction to hear Plaintiffs’ claim for medical malpractice because Plaintiffs do not allege a federal claim and have not shown that Plaintiffs are citizens of one state and all of the defendants are citizens of another state.

After reviewing the Complaint and the Report and Recommendation, as well as the applicable law, this Court finds no clear error.

IT IS THEREFORE ORDERED THAT:

(1) The Report and Recommendation (d/e 5) is ADOPTED in its entirety.

(2) Plaintiffs' Motion for Leave to Proceed in District Court Without Prepaying Fees or Costs (d/e 2) is DENIED.

(3) This case is DISMISSED without prejudice for failure to state a claim.

(4) This case is closed.

ENTER: October 19, 2017

FOR THE COURT:

s/ Sue E. Myerscough

SUE E. MYERSCOUGH

UNITED STATES DISTRICT JUDGE