

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIAN McDANIEL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 10-cv-0783-MJR-SCW
	)	
DR. BIRCH,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

REAGAN, District Judge:

Brian McDaniel filed this civil rights suit under 42 U.S.C. 1983, alleging deprivations of his constitutional rights while incarcerated at Vienna Correctional Center in the custody of the Illinois Department of Corrections. On threshold review of McDaniel's second amended complaint under 28 U.S.C. 1915A, the undersigned Judge dismissed certain claims and allowed the case to proceed as to Dr. Kimberly Birch. Service was ordered, and the case was referred to the Honorable Stephen C. Williams, United States Magistrate Judge, to handle pretrial matters pursuant to Local Rule 72.1(a).

On March 12, 2012, Defendant Birch moved for summary judgment, to which Plaintiff McDaniel responded on April 30, 2012. On July 25, 2012, Magistrate Judge Williams filed a thorough Report (Doc. 57) recommending that the undersigned District Judge grant Birch's summary judgment motion due to Plaintiff's failure to exhaust administrative remedies before filing this suit, dismiss this case without prejudice, and deny as moot all remaining pending motions. The Report advised the parties that any objections must be filed "on or before August 13, 2012" (Doc. 57, p. 14).

As of the 8:00 pm on August 15, 2012, no objections were filed by any party. Accordingly, pursuant to 28 U.S.C. 636(b), the undersigned Judge need not conduct *de novo* review of the Report and Recommendations. **28 U.S.C. 636(b)(1)(C)**. **See also *Thomas v. Arn*, 474 U.S. 140 (1985); *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 741 (7<sup>th</sup> Cir. 1999); *Video Views Inc., v. Studio 21, Ltd.*, 797 F.2d 538 (7<sup>th</sup> Cir. 1986).**

No objections have been filed to the Report submitted by Judge Williams. The Court hereby **ADOPTS** that Report (Doc. 57) in its entirety, **GRANTS** Defendant Birch's summary judgment motion (Doc. 43), and **DISMISSES** Plaintiff's claims against Defendant Birch without prejudice. **See *Burrell v. Powers*, 431 F.3d 282, 284 (7<sup>th</sup> Cir. 2005), citing *Walker v. Thompson*, 288 F.3d 1005, 1009 (7<sup>th</sup> Cir. 2002) ("Dismissal for failure to exhaust is without prejudice...."); *Ford v. Johnson*, 362 F.3d 395, 401 (7<sup>th</sup> Cir. 2004) ("We therefore hold that *all* dismissals under § 1997e(a) should be without prejudice")**. As recommended in Judge Williams' Report, the Court also **FINDS MOOT** the remaining motions (Docs. 31, 40, and 53) and, because no claims remain herein, **DIRECTS THE CLERK OF COURT TO ENTER FINAL JUDGMENT**. Judgment shall be entered in favor of all Defendants and against Plaintiff, in accord with this Order and the June 13, 2011 Order (Doc. 14).

IT IS SO ORDERED.

DATED August 15, 2012.

s/ Michael J. Reagan  
Michael J. Reagan  
United States District Judge