

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

CURTIS PENDEGRAFT,)
)
Plaintiff,)
)
vs.) Case No. 15-CV-816-NJR-DGW
)
DR. ALBERTO BUTALID,)
MIKE ARNOLD, MARK ETTER,)
LUKE BRANDMEYER, KYLE THOLE,)
MICHELLE NORDIKE,)
JAYCE FAULKNER, PENNY GEORGE,)
KEVIN MURPHY, BRANDI BEASLEY,)
and DR. FRANCIS KAYIRA,)
)
Defendants.)

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

This matter is before the Court on the Report and Recommendation of United States Magistrate Judge Donald G. Wilkerson (Doc. 145), which recommends denying the motion for summary judgment on the issue of exhaustion of administrative remedies filed by Defendant Dr. Francis Kayira (Docs. 127). No objections to the Report and Recommendation were filed. For the reasons explained below, the Court adopts Magistrate Judge Wilkerson's Report and Recommendation and denies the motions for summary judgment.

BACKGROUND

Plaintiff Curtis Pendegraft, an inmate of the Illinois Department of Corrections currently incarcerated at the East Moline Correctional Center, filed this *pro se* lawsuit pursuant to 42 U.S.C. § 1983 on July 28, 2015, alleging that he received inadequate

medical care in violation of the Eighth Amendment while he was incarcerated at the Clinton County Jail, Graham Correctional Center, and Vienna Correctional Center (Doc. 1). Following a threshold review of the complaint under 28 U.S.C. § 1915A, Pendegraft was permitted to proceed on a claim of deliberate indifference against a number of Defendants, including a John Doe, and a First Amendment claim of retaliation (Doc. 11).

In June 2016, Defendant John Doe was identified as Dr. Francis Kayira, a physician at Graham Correctional Center (Doc. 95; Doc. 104). After Dr. Kayira entered the case, he was given time to file a motion for summary judgment on the issue of exhaustion (Doc. 126). He filed his motion on October 12, 2016 (Doc. 127). Pendegraft filed a timely response in opposition to the motion (Doc. 130). Magistrate Judge Wilkerson determined that an evidentiary hearing was not necessary, and he issued the Report and Recommendation currently before the Court on March 8, 2017 (Doc. 145). Objections to the Report and Recommendation were due on or before March 22, 2017. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2); SDIL-LR 73.1(b). As previously mentioned, neither party filed an objection.

ANALYSIS

Where timely objections are filed, the court must undertake a *de novo* review of the Report and Recommendation. 28 U.S.C. § 636(b)(1)(B), (C); FED. R. CIV. P. 72(b); SDIL-LR 73.1(b); *Harper v. City of Chicago Heights*, 824 F. Supp. 786, 788 (N.D. Ill. 1993); *see also Govas v. Chalmers*, 965 F.2d 298, 301 (7th Cir. 1992). Where neither timely nor specific objections to the Report and Recommendation are made, however, the court

need not conduct a *de novo* review. See *Thomas v. Arn*, 474 U.S. 140 (1985). Instead, the court should review the Report and Recommendation for clear error. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). The court may then “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

The undersigned has carefully reviewed the briefs and exhibits submitted by the parties, as well as Magistrate Judge Wilkerson’s Report and Recommendation. Following this review, the undersigned fully agrees with the conclusions of Magistrate Judge Wilkerson.

In 2015, Pendegraft was very briefly housed at Graham Correctional Center from January 29th to February 17th (Doc. 145). During that time, he had contact with Dr. Kayira on one occasion: January 30, 2015 (Doc. 145). While Pendegraft’s cumulative counseling summary does not indicate that he submitted a grievance during the relevant time period, he submitted an affidavit in which he swore that he filed a grievance on January 31, 2015, because he didn’t receive his medication or bandages from Dr. Kayira (Doc. 145). Pendegraft further swore that he did not receive a response to the January 31st grievance (Doc. 145). Magistrate Judge Wilkerson determined that Pendegraft was credible, and that credibility determination is entitled to deference. See *Pavey v. Conley*, 663 F.3d 899, 904 (7th Cir. 2011).¹

¹ This credibility determination was based on a previous evidentiary hearing held in connection with the other Defendants’ motions for summary judgment on the issue of exhaustion (Doc. 145). Pendegraft submitted the same affidavit in response to those motions that he submitted in response to Dr. Kayira’s motion (Doc. 145). Magistrate Judge Wilkerson previously found that Pendegraft’s assertions in his affidavit related to the other Defendants were credible (Doc. 105), and based on that finding, likewise found that his assertions related to Dr. Kayira were credible (Doc. 145).

Because prison officials failed to respond to Pendegraff's grievance, the grievance process was rendered unavailable. *Brengettcy v. Horton*, 423 F.3d 674, 682 (7th Cir. 2005) (citing *Lewis v. Washington*, 300 F.3d 829, 833 (7th Cir. 2002)). Therefore, Pendegraff is deemed to have exhausted his administrative remedies. *Lewis*, 300 F.3d at 833.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Wilkerson's Report and Recommendation (Doc. 145) and **DENIES** the motion for summary judgment on the issue of exhaustion filed by Defendant Francis Kayira (Doc. 127).

IT IS SO ORDERED.

DATED: April 10, 2017

A handwritten signature in cursive script that reads "Nancy J. Rosenstengel". The signature is written in black ink and is positioned above a horizontal line.

NANCY J. ROSENSTENGEL
United States District Judge