

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

TOM TUDUJ,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 15-CV-1294-NJR-DGW
)	
STEVEN NEWBOLD,)	
KIMBERLY BUTLER,)	
HARRY GEORGE HENDERSON,)	
CRAIG ASSELMEIER, and)	
JOHN R. BALDWIN,)	
)	
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. 63), which recommends denying the motions for summary judgment on the issue of exhaustion of administrative remedies filed by Defendants Steven Newbold, Kimberly Butler, Harry George Henderson, and John Baldwin (Docs. 40, 45).¹ None of the parties filed an objection to the Report and Recommendation. For the reasons explained below, the Court adopts Magistrate Judge Wilkerson's Report and Recommendation and denies the motions for summary judgment.

Plaintiff Tom Tuduj, an inmate of the Illinois Department of Corrections ("IDOC") currently incarcerated at Menard Correctional Center, filed a *pro se* lawsuit pursuant to 42 U.S.C. § 1983 for deprivations of his constitutional right to adequate dental care (Doc. 1). Specifically, Tuduj claims that he was refused cavity fillings and

¹ Craig Asselmeier is the only Defendant who did not move for summary judgment on the issue of exhaustion of administrative remedies.

root canals to resolve his dental needs, which caused his teeth to further deteriorate to the point they had to be extracted. Tuduj claims that he lost several teeth that could have been saved had he received proper dental care. Following a threshold review of the amended complaint pursuant to 28 U.S.C. § 1915A, Tuduj was permitted to proceed on an Eighth Amendment claim Doctors Steven Newbold, Harry George Henderson, and Craig Asselmeier for denying him adequate dental care (Count 1) and against IDOC Director John Baldwin and Warden Kimberly Butler for implementing a policy and/or practice of refusing all forms of dental care other than tooth extractions (Count 2) (Doc. 18).

Defendant Newbold filed a motion for summary judgment on February 24, 2017, arguing that Tuduj failed to exhaust his administrative remedies prior to filing suit as required by the Prison Litigation Reform Act (Doc. 40). Defendants Baldwin, Butler, and Henderson then filed their own motion for summary judgment on the issue of exhaustion on March 1, 2017 (Doc. 45). Tuduj filed responses to opposition to both motions for summary judgment (Docs. 53, 54). In accordance with *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008), Magistrate Judge Wilkerson held an evidentiary hearing on the issue of exhaustion on August 3, 2017 (Doc. 61). On August 10, 2017, Magistrate Judge Wilkerson issued the Report and Recommendation currently before the Court, in which he recommends denying the motions for summary judgment (Doc. 63). Objections to the Report and Recommendation were due on or before August 24, 2017. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2); SDIL-LR 73.1(b). As previously mentioned, no objections were filed.

Where neither timely nor specific objections to the Report and Recommendation are made, 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 findings, analysis, and conclusions of Magistrate Judge Wilkerson. The Report and Recommendation (Doc. 63) is **ADOPTED** in its entirety, and Defendants’ motions for summary judgment (Docs. 40, 45) are **DENIED**.

IT IS SO ORDERED.

DATED: September 1, 2017



NANCY J. ROSENSTENGEL
United States District Judge