

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MATTHEW CATANZARO,

Plaintiff,

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS, CORRECTIONAL
MEDICAL SERVICES, BRUCE CURTIS, J.
McHENRY, JUDY COTTON, JUDITH
DAOUST, D. SMITH, JOE KLEINHANS,
SHERRIE ROBBINS, DEBBIE RUSS,

Defendants.

Case Number 08-11173-BC
Honorable Thomas L. Ludington
Magistrate Judge R. Steven Whalen

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING
DEFENDANTS DAOUST, CORRECTIONAL MEDICAL SERVICES, AND RUSS'S
MOTION TO DISMISS OR FOR SUMMARY JUDGMENT, AND DISMISSING WITH
PREJUDICE PLAINTIFF'S CLAIMS AGAINST DEFENDANTS DAOUST,
CORRECTIONAL MEDICAL SERVICES, AND RUSS**

This matter is before the Court on a report and recommendation [Dkt # 147] issued by Magistrate R. Steven Whalen on February 28, 2010. The report and recommendation addresses the motion to dismiss or for summary judgment filed on April 9, 2009, by Defendants Judith Daoust, Correctional Medical Services ("CMS"), and Debbie Russ [Dkt. # 82]. While the report and recommendation also addresses the claims of another prisoner, Michael Garrison [case no. 09-14560] this Court's order addresses only Plaintiff Catanzaro's claims and the portion of the report and recommendation applicable to Plaintiff Catanzaro's claims. While Plaintiff Catanzaro and Michael Garrison initially filed a joint complaint, the Court severed Plaintiff Catanzaro and Michael Garrison's claims and directed the Clerk of the Court to assign a new case number to Michael

Garrison's claims on November 19, 2009. As identified in the caption of this document, Plaintiff Catanzaro's claims maintained case number 08-11173.

The magistrate judge recommends that Defendants Daoust, CMS, and Russ's motion to dismiss or for summary judgment be granted as to Plaintiff Catanzaro because Plaintiff Catanzaro's allegations do not amount to "deliberate indifference" to a serious medical need within the meaning of the Eighth Amendment. Due to the fact that the copy of the report and recommendation initially mailed to Plaintiff Catanzaro was returned as undeliverable, the Court remailed the report and recommendation to Plaintiff's updated address, and reset the time for objections. *See* [Dkt. # 151, 152]. As of today's date, no party has filed any objections to the magistrate judge's report and recommendation. The election to not file objections to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Nonetheless, the Court agrees with the conclusion reached by the magistrate judge.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [Dkt. # 147] is **ADOPTED** as it pertains to Plaintiff Catanzaro.

It is further **ORDERED** that Defendants Daoust, CMS, and Russ's motion to dismiss or for summary judgment [Dkt. # 82] is **GRANTED** as it pertains to Plaintiff Catanzaro, and that Plaintiff Catanzaro's claims against Defendants Daoust, CMS, and Russ are **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the Clerk of the Court is **DIRECTED** to update the status of Defendants Daoust, CMS, and Russ to "terminated" on the docket, to terminate the pending motion [Dkt. # 82] on the docket, and to terminate the report and recommendation [Dkt. # 147] on the docket; and that resolution of the motion and report and recommendation in this case [08-11173]

does not affect the motion or report and recommendation pending in Michael Garrison's case [09-14560].

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: April 22, 2010

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on April 22, 2010.

s/Tracy A. Jacobs
TRACY A. JACOBS