

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSHUA COPENHAVER-NELSON,

Plaintiff,

v.

Case No. 07-12219

SUE WAYDA-SLOMSKI, NICHOLAS
NESTASE, RAYMOND GELABERT,
DANIEL SCHOENFELD, and
CORRECTIONAL MEDICAL SERVICES,

Honorable Patrick J. Duggan

Defendants.

OPINION AND ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on September 3, 2008.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On May 22, 2007, Joshua Copenhaver-Nelson (“Plaintiff”), a prisoner proceeding *pro se*, initiated this action against the following Defendants: Sue Wayda-Slowski, Nicholas Nestase, and Daniel Schoenfeld, all of whom were or are employees of the Michigan Department of Corrections (“MDOC”); Correctional Medical Services (“CMS”), a private corporation that contracts with MDOC to provide medical care to state prisoners; and Raymond Gelabert, a private contractor to CMS.¹ In his complaint,

¹For ease of reference, the Court will refer to Defendants Wayda-Slowski, Nestase, and Schoenfeld collectively as the “MDOC Defendants,” and Defendants CMS and

Plaintiff alleges that one or more of the MDOC Defendants sexually harassed him and created a hostile work environment. Plaintiff also alleges that the CMS Defendants denied him the appropriate medical treatment for his esophageal disease. Finally, Plaintiff appears to allege that Defendant Wayda-Slowski violated his constitutional right to meaningful access to the courts.

Presently before this Court are two motions filed by Defendants, both of which were referred to Magistrate Judge Steven D. Pepe. The first motion is the CMS Defendants' motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, which was filed on December 11, 2007. Plaintiff filed a response to the CMS Defendants' motion on December 20, 2007, to which the CMS Defendants replied. The second motion before this Court is the MDOC Defendants' motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, which was filed on January 7, 2008. Plaintiff has not responded to the MDOC Defendants' motion and the time to file a response has expired. E.D. Mich. LR 7.1(d)(1)(B).

On August 1, 2008, Magistrate Judge Pepe issued a Report and Recommendation ("R&R") recommending that both the CMS and MDOC Defendants' motions be granted and Plaintiff's complaint be dismissed. At the conclusion of his R&R, Magistrate Judge Pepe informed the parties that any objections to his R&R must be filed "within ten (10) days of service." (R&R at 16.) Magistrate Judge Pepe also informed the parties that a failure to file an objection within the specified time "constitutes a waiver of any further

Gelabert collectively as the "CMS Defendants."

right of appeal.” (*Id.*) Plaintiff has not filed a timely objection to Magistrate Judge Pepe’s R&R.

The Court has carefully reviewed the R&R and concurs with Magistrate Judge Pepe’s conclusion that the CMS Defendants’ and the MDOC Defendants’ motions should be granted.

Accordingly,

IT IS ORDERED that the CMS Defendants’ motion to dismiss and the MDOC Defendants’ motion for summary judgment are **GRANTED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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Magistrate Judge Steven D. Pepe