

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HEATHER ROBINSON

Plaintiff,
v.

CASE NO. 08-14069
Hon. Lawrence P. Zatkoff

PATRICIA CARUSO, *et al.*,
Defendants,

**OPINION AND ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff, a prisoner proceeding *pro se*, filed a Complaint under 42 U.S.C. § 1983, claiming a violation of her rights under the United States Constitution. This matter is currently before the Court on Magistrate Judge Michael Hluchaniuk's Report and Recommendation (Docket #129), wherein the Magistrate Judge recommends that Plaintiff's action be dismissed. Petitioner timely filed objections to the Report and Recommendation.

After a thorough review of the court file (including the parties' motions and briefs), the Report and Recommendation, and Plaintiff's objections to the Report and Recommendation, this Court will adopt the Report and Recommendation and enter it as the findings and conclusions of this Court. The Court will, however, briefly address Plaintiff's objections.

Plaintiff makes six objections. First, Plaintiff objects to the Magistrate Judge's recommendation that claims against defendant Campbell (the only remaining Defendant, who died before being served) be dismissed without prejudice, among other reasons, because Plaintiff failed to identify a substitute party. Plaintiff points to no legal error committed by the Magistrate Judge, but asserts that she requested the Court to name the appropriate party. The Court acknowledges that Plaintiff, as a *pro se* plaintiff, is entitled to more liberal pleading standards than if she was represented by counsel. Nonetheless, no legal authority compels this Court to construct and plead

Plaintiff's case on her behalf. *See, e.g., Haines v. Kerner*, 404 U.S. 519 (1972); *GJR Invs., Inc. v. Cnty. of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir.1998). A rule to the contrary would destroy the adversarial system upon which this great judicial institution was founded. Plaintiff's first objection is rejected.

Second, Plaintiff objects to the Magistrate Judge's reliance on Fed. R. Civ. P. 4(m), requiring service on a defendant within 120 days to avoid dismissal of the action against that defendant. The Magistrate Judge was not inclined to dismiss the entire case solely due to the passing of 120 days before defendant Campbell could be served. Rather, the Magistrate Judge decided that the 120 days had passed and Plaintiff failed to identify a party for which Plaintiff could serve. Plaintiff's second objection is rejected.

Third, Plaintiff objects to the Magistrate Judge's statements regarding the lack of prejudice to Plaintiff for dismissing this case due to the Court's prior orders suggesting that Plaintiff did not have a viable claim for deliberate indifference. Plaintiff provides no assertions or legal authority, which this Court has reviewed in previous orders, that would support a finding that Defendants' culpability with respect to treating Plaintiff rises above the level of negligence. Plaintiff's third objection is rejected.

Plaintiff's fourth, fifth, and sixth objections pertain to quotations of this Court's prior orders in this case. First, the Magistrate Judge did not incorrectly quote the Court or use such quotations out of context. Second, to the extent that Plaintiff objects to the Court's prior orders, the Court has already addressed Plaintiff's arguments in those orders, and such objections are not within the scope of objecting to this Report and Recommendation. Plaintiff's fourth, fifth, and sixth objections are denied.

Accordingly, for the reasons stated above, the Court hereby ADOPTS the Report and Recommendation [dkt 129] and enters it as the findings and conclusions of this Court.

IT IS FURTHER ORDERED that Plaintiff's cause of action is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that Plaintiff's motion for substitution is DENIED. Judgment shall be entered accordingly.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: August 8, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on August 8, 2011.

S/Marie E. Verlinde
Case Manager
(810) 984-3290